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Briefing on How To Use the Federal Register
For information on briefing in Boston, MA, see announcement on the inside cover of this issue.

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WHO: The Office of the Federal Register.

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Contents

Federal Register

Vol. 55, No. 61

Thursday, March 29, 1990

Separate Parts In This Issue

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

5 CFR
1601 11880

7 CFR
1421 11571

Proposed Rules:
916 11592
917 11592
1006 11599
1007 11599
1011 11599
1012 11599
1013 11599
1030 11599
1032 11599
1033 11599
1036 11599
1040 11599
1046 11599
1049 11599
1050 11599
1064 11599
1065 11599
1068 11599
1076 11599
1079 11599
1093 11599
1094 11599
1096 11599
1097 11599
1098 11599
1099 11599
1106 11599
1108 11599
1120 11599
1124 11599
1126 11599
1131 11599
1132 11599
1134 11599
1135 11599
1137 11599
1138 11599
1139 11599

10 CFR
11 11572
25 11572
95 11572

12 CFR
1505 11719
1506 11720
1606 11720

Proposed Rules:
704 11608
741 11608

14 CFR
39 11720
121 11720

Proposed Rules:
39 11720

19 CFR
353 11719
355 11719

Proposed Rules:
111 11611
113 11611
142 11611
143 11611
159 11611

21 CFR
200 11575
201 11575
207 11575
211 11575
225 11575
226 11575
250 11575
299 11575
310 11575
312 11575
314 11575
320 11575
329 11575
330 11575
331 11575
361 11575
369 11575
429 11575
431 11575
433 11575
440 11575
441 11575
442 11575
444 11575
446 11575
448 11575
449 11575
452 11575
455 11575

Proposed Rules:
101 11719
500 11719
589 11719
600 11611

28 CFR
0 11585

30 CFR

Proposed Rules:
917 (2 documents) 11618, 11619

33 CFR
100 (2 documents) 11585, 11586
117 11587

Proposed Rules:
100 11619

40 CFR
261 11798
264 11798
265 11798
268 11798
271 11798
302 11798

42 CFR

Proposed Rules:
60 11620
72 11624

47 CFR
74 11587

Proposed Rules:
2 11625
22 11625
25 11625

48 CFR
570 11587

50 CFR
216 11588
301 11590

Proposed Rules:
17 (2 documents) 11625, 11626

Rules and Regulations

Federal Register
Vol. 55, No. 61
Thursday, March 29, 1990

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1421

Standards for Approval of Warehouses for Grain, Rice, Dry Edible Beans, and Seed

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this rule is to amend the regulations at 7 CFR 1421.5552 *et seq.* relating to the Commodity Credit Corporation (CCC) Standards for Approval of Warehouses for Grain, Rice, Dry Edible Beans, and Seed. The final rule will establish new and uniform load out requirements for warehouses approved under the Uniform Grain Storage Agreement, Uniform Rice Storage Agreement, Milled Rice Storage Agreement, Bean Storage Agreement, and Seed Storage Agreement.

EFFECTIVE DATE: April 30, 1990.

FOR FURTHER INFORMATION CONTACT: Jerry Kretsch, Storage Contract Division, USDA, room 5968-South Building, P.O. Box 2415, Washington, DC 20013, (202) 447-7433.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed in conformity with Executive Order 12291 and Departmental Regulation 1512-1 and has been classified as "not major" since implementation of the provisions of this rule will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, federal, State, or local governments, or geographical regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, the environment, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

This action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities. Therefore, the Regulatory Flexibility Act is not applicable to this rule. In addition, CCC is not required by 5 U.S.C. or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

It has been determined by an environmental evaluation that this action will have no significant adverse impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

The CCC Charter Act (15 U.S.C. 714 *et seq.*) authorizes CCC to conduct various activities to stabilize, support, and protect farm income and prices. CCC is authorized to carry out such activities as making price support available with respect to various agricultural commodities, removing and disposing of surplus agricultural commodities, exporting or aiding in the exportation of agricultural commodities, and procuring agricultural commodities for sale both in the domestic market and abroad.

Section 4(h) of the CCC Charter Act (15 U.S.C. 714b(h)) provides that CCC shall not acquire real property in order to provide storage facilities for agricultural commodities, unless CCC determines that private facilities for the storage for such commodities are inadequate. Further, section 5 of the CCC Charter Act (15 U.S.C. 714c) provides that, in carrying out the Corporation's purchasing and selling operations, and in the warehousing, transporting, processing, or handling of agricultural commodities, CCC is directed to use, to the maximum extent practicable, the usual and customary channels, facilities, and arrangements of trade and commerce.

Accordingly, CCC has published Standards for Approval of Warehouses for Grain, Rice, Dry Edible Beans, and Seed that must be met by warehousemen before CCC will enter into storage agreements with such warehousemen for the storage of grain and other commodities owned by CCC or which are serving as collateral for CCC price support loans.

Warehousemen who are currently under contract with CCC are required to meet all of the terms and conditions of the regulations. In recent years, many warehousemen have lost their rail service, and load out from these warehouses is now limited to truck only. In addition, many warehousemen increased their storage capacities during the 1980's. The regulations at 7 CFR 1421.5552 now require warehousemen approved under the Uniform Grain Storage Agreement to have a work force and equipment available to complete a load out of their facility within thirty (30) working days. Warehousemen approved under the Uniform Rice Storage Agreement, Milled Rice Storage Agreement, and Seed Storage Agreement are allowed ninety (90) working days to complete a load out of their facility.

Accordingly, a notice of proposed rulemaking was published by the Department in the **Federal Register** on December 15, 1989, 54 FR 51403, requesting comments with respect to changes in the Standards for Approval of Warehouses for Grain, Rice, Dry Edible Beans, and Seed. The comment period was for 30 days and ended on January 16, 1990.

An amendment to the regulations at 7 CFR 1421.5552 was proposed which would provide for a maximum load out time afforded all warehousemen subject to these regulations be set at sixty working days.

Eight comments were received concerning the proposed rule. These comments were received from National, Regional, and State grain associations and three individual warehousemen. All eight comments were in favor of amending the regulations to increase the load out requirement from thirty days. Six comments agreed with the recommended sixty days requirement while two comments suggested that the load out period be increased to ninety days.

The Standards of Approval are intended to protect the interest of all depositors, including CCC. A time greater than the sixty day load out requirement could seriously hinder CCC's ability to service its foreign and domestic programs. Therefore, it has been determined that the maximum load out time afforded all warehousemen subject to these regulations should be set at sixty days.

Accordingly, it has been determined that the provisions of the proposed rule should be adopted without change as a final fule.

List of Subjects in 7 CFR Part 1421

Grain, Loan Programs, Agriculture, Oilseeds, Peanuts, Price Support Programs, Soybeans, Surety Bonds, Tobacco, and Warehouses.

Final Rule

PART 1421—[Amended]

Accordingly, the regulations at 7 CFR part 1421 are amended as follows:

1. The authority citation for 7 CFR part 1421, Standards for Approval of Warehouses for Grain, Rice, Dry Edible Beans, and Seed continues to read as follows:

Authority: 15 U.S.C. 714b and 714c; 7 U.S.C. 1441, 1446, 1447, 1421, 1423, and 1425.

§ 1421.552 [Amended]

2. Section 1421.5552 is amended by revising paragraph (a)(9) to read as follows:

* * * * *

(a) * * *

(9) Have a work force and equipment available to complete load out within sixty (60) working days of that quantity of grain, rice, beans, or seed for which the warehouse is or may be approved under the Uniform Grain Storage Agreement, Uniform Rice Storage Agreement, Milled Rice Storage Agreement, Bean Storage Agreement, or Seed Storage Agreement. Notwithstanding the provisions of this paragraph, the load out capacity of any warehouse at a single location need not exceed the equivalent of 200 railroad cars per day.

* * * * *

Signed at Washington, DC on March 22, 1990.

John A. Stevenson,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 90-7149 Filed 3-28-90; 8:45 am]

BILLING CODE 3410-05-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 11, 25 and 95

RIN 3150-AD28

Credit Checks—Expanded Personnel Security Investigative Coverage

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations to (1) expand the investigative scope for licensee "R" special nuclear material access authorization and "L" security clearance applicants by adding a credit check; and (2) revise the corresponding fee schedules to recover the additional cost of each credit check and cost of newly imposed Federal Bureau of Investigation (FBI) fees for processing fingerprint cards. This amendment is necessary to achieve a higher degree of assurance that licensee "R" and "L" applicants are reliable, trustworthy, and do not have any significant financial problems which may cause them to be susceptible to pressures, blackmail, or coercion to act contrary to the national interest.

EFFECTIVE DATE: April 30, 1990.

FOR FURTHER INFORMATION CONTACT: Duane G. Kidd, Division of Security, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 492-4127.

SUPPLEMENTARY INFORMATION: On April 12, 1989, the Executive Director for Operations (EDO) approved the immediate addition of a credit check to the scope of the initial investigation coverage required for an NRC "L" security clearance for NRC employees, contractors, and other non-licensee personnel. The EDO also approved the initiation of rulemaking to implement the same investigative scope change for "R" and "L" licensee applicants. The current investigative coverage for "R" and "L" applicants normally consists of a national agency check (NAC) conducted by the Office of Personnel Management (OPM). While a NAC provides important coverage of an individual's background (e.g., FBI criminal history, fingerprint, and name checks; record checks with OPM, the Department of Defense (DOD), and other applicable agencies), it does not provide information concerning an individual's financial situation. The NRC, therefore, is amending its regulations to expand the present investigative scope for an "R" special nuclear materials access authorization and "L" security clearance by adding a credit check.

The addition of the credit check is necessary to achieve a higher degree of assurance that "R" and "L" licensee applicants are reliable, trustworthy, and do not have any significant financial problems which may cause them to be susceptible to pressure, blackmail, or coercion to act contrary to the national interest. In October 1987, OPM added several significant financial questions to its SF-86, "Questionnaire For Sensitive Positions," which the NRC currently uses as a basis for its personnel security investigations. OPM added these questions in order to identify security related concerns and possible exploitable weaknesses in a person's background. In view of recent espionage for money cases, it is important to identify those individuals who have serious financial difficulties and are, therefore, more susceptible to committing espionage or similar activities against the United States.

Furthermore, the NRC has found, based on actual case experience, that an individual's financial difficulties may be an indicator or result of other more serious problems such as drug abuse, alcohol abuse, or dishonesty.

In addition to providing greater assurance of an "R" and "L" licensee applicant's eligibility, the credit check will achieve greater comparability between NRC's requirements and those of the Department of Energy and other agencies which require the credit check for their "L" and Secret clearances. The requirement will also be more consistent with the investigative coverage proposed in the Nuclear Management and Resources Council (NUMARC) guidelines for licensee personnel with unescorted access to protected and vital areas of nuclear power plants.

On November 30, 1989, the FBI notified all Federal non-law enforcement agencies, including the NRC, that they would, effective January 1, 1990, begin charging a $14.00 fee to process fingerprint cards related to security clearances. Previously there had been no charge for this service. This means the cost to NRC for processing a licensee "R" special nuclear material access authorization and "L" security clearance is increased. Because the fees NRC charges licensees for these clearances are dependent on NRC's costs to process them, it is necessary to increase the fees to recover these additional costs.

The applicable fee schedules have been revised to reflect the additional cost associated with the conduct of the credit check and the FBI fee for

processing fingerprint cards. Specifically, the total fee for an NRC "R" special nuclear material access authorization or "L" security clearance is increased from $15.00 to $40.00.

Public Comments

On September 21, 1989, the proposed rule was published for comment (54 FR 38863). The comment period expired on November 21, 1989. Four comments received from the public. One comment, from a public interest law and policy foundation, supported the addition of credit checks to the investigations of individuals being considered for access to classified information or special nuclear materials. This commenter believed that individuals with serious credit problems created a higher risk to the security of such information and materials.

Two trade unions, whose members work for nuclear power plants or are employed by contractors at such plants, and a private citizen, disagreed with the addition of a credit check to the investigations on the basis that it constituted an unwarranted invasion of the privacy of workers at nuclear power plants and was overly broad in its application to all workers at nuclear power stations. Additionally, it was stated that (1) There were no procedures to ensure the privacy of the records that would be collected, (2) there were no standards for the evaluation of information that would be collected and (3) there was no established time limit on how far back information could be collected. All three of these commenters presumed that this rule applied to large numbers of workers at nuclear power stations. This is not so. These rules only apply to individuals who are being considered for access to U.S. Government classified information or access to or control over formula quantities of Special Nuclear Material. With the exception of Fort Saint Vrain, which uses high enriched uranium fuel, classified information or formula quantities of Special Nuclear Material are not normally present at a commercial power reactor. Fort Saint Vrain is permanently shut down and is reducing its staff. That licensee is attempting to dispose of its remaining non-self protecting high enriched fuel and, when it does that, will no longer be subject to these rules. Until then it is possible that a few additional security personnel (due to attrition, etc.) may need to be cleared. At other power plants there have been cases where a few senior management and safeguards related personnel have been cleared for access to classified information. However, to the best of NRC's knowledge, these rules will not apply to any tradesperson at any commercial U.S. light water power reactor.

Though the three objections were clearly related to the presumed impact on tradespeople working at nuclear power plants, a situation not created by these amendments, NRC has reevaluated the concerns they raised. First, there is no question that any investigation of a person's background involves a degree of invasion of privacy, and an additional check, such as the credit check discussed in this amendment, increases the impact. The NRC has decided that the National Security and public health and safety concerns for assuring the integrity, trustworthiness and reliability of individuals who have access to classified information or access to or control over formula quantities of Special Nuclear Material warrants these amendments. This is clearly evidenced by the fact that the checks are required for its own employees and are generally required throughout the U.S. Government. Second, there are procedures to ensure the privacy of records that may be collected under the provisions of these rule changes. Specifically, such records are protected from public disclosure under the provisions of the Privacy Act of 1974, as amended, and are subject to the routine uses and safeguards enumerated for NRC Systems of Records, System NRC–39, "Personnel Security Files and Associated Records-NRC." Third, 10 CFR part 11, 25 and 95, which are affected by these rules changes, clearly indicate that any unfavorable information developed would be evaluated in conformance with the procedures and requirements of 10 CFR Part 10 "Criteria and Procedures for Determining Eligibility for Access to Restricted Data or National Security Information or an Employment Clearance" or 10 CFR Part 11 "Criteria and Procedures for Determining Eligibility for Access to or Control Over Special Nuclear Material." 10 CFR parts 10 and 11 have specific procedures both for evaluating such information and for assuring due process for any individual about whom the NRC may develop adverse information. Fourth, and finally, the commenter is correct in the assertion that there is no limit on the age of the records that could be collected. However, under the standards of 10 CFR part 10 or 11, which would be used to evaluate such information, the age of the information would be relevant and decide the weight it would be given in the final determination. The NRC is, therefore, publishing this final rule as originally proposed (with the addition of provisions necessary to recover the cost of FBI charges for processing fingerprint cards).

Environmental Impact: Categorical Exclusion

The NRC has determined that this regulation is the type of action described as a categorical exclusion in 10 CFR 51.22(c)(1). Therefore, neither an evironmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 [44 U.S.C. 3501 et seq.]. Existing requirements were approved by the Office of Management and Budget, approval numbers 3150–0046, 3150–0047, and 3150–0062.

Regulatory Analysis

The Commission has prepared a regulatory analysis on this final regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The analysis is available for inspection in the NRC Public Document Room, room LL6, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the analysis may be obtained from Duane G. Kidd, Division of Security, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 492–4127.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Commission certifies that this final rule does not have a significant economic impact on a substantial number of small entities. This rulemaking only applies to those licensees and others who need to use, process, store, transport, or deliver to a carrier for transport formula quantities of special nuclear material (as defined in 10 CFR part 73) or generate, receive, safeguard, and store National Security Information or Restricted Data (as defined in 10 CFR part 25). Approximately 31 NRC licensee and other license related interests would be affected under the provisions of 10 CFR parts 11 and/or 25. However, 20 of these licensees, or other interests, have only a limited number of active clearances, e.g., one or two each, relating to classified safeguards activities. Because these licensees are not classified as small entities as defined by the NRC's size standards (December 9, 1985; 50 FR 50241), the Commission finds that this

rule does not have a significant economic impact upon a substantial number of small entities.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule, and therefore, that a backfit analysis is not required for this final rule, because these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects

10 CFR Part 11

Hazardous materials—transportation, Investigations, Nuclear materials, Reporting and recordkeeping requirements, Security measures, Special nuclear material.

10 CFR Part 25

Classified information, Investigations, Penalty, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 95

Classified information, Penalty, Reporting and recordkeeping requirements, Security measures.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 11, 25, and 95.

PART 11—CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO OR CONTROL OVER SPECIAL NUCLEAR MATERIAL

1. The authority citation for part 11 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Section 11.15(e) also issued under sec. 501, 85 Stat. 290 (31 U.S.C. 483a).

2. In § 11.7, paragraph (d) is revised to read as follows:

§ 11.7 Definitions.

* * * * *

(d) *"NRC–'R' special nuclear material access authorization"* means an administrative determination based upon a national agency check and credit investigation that an individual in the course of employment is eligible to work at a job falling within the criterion of § 11.11(a)(2).

3. In § 11.15, paragraphs (e)(1) and (f) are revised to read as follows:

§ 11.15 Application for special nuclear material access authorization.

* * * * *

(e)(1) Each application for special nuclear material access authorization, renewal, or change in level must be accompanied by the licensee's remittance, payable to the U.S. Nuclear Regulatory Commission, according to the following schedule:

i. NRC–U requiring full field investigation	$2,415
ii. NRC–U requiring full field investigation (expedited processing)	2,932
iii. NRC–U based on certification of comparable full field background investigation	[1] 0
iv. NRC–U or R renewal	[1] 40
v. NRC–R	[1] 40
vi. NRC–R based on certification of comparable investigation	[2] 0

[1] If the NRC determines, based on its review of available data, that a full field investigation is necessary, a fee of $2,415 will be assessed prior to the conduct of the investigation.

[2] If the NRC determines, based on its review of available data, that a national agency check and credit investigation is necessary, a fee of $40.00 will be assessed prior to the conduct of the investigation; however, if a full field investigation is deemed necessary by the NRC, based on its review of available data, a fee of $2,415 will be assessed prior to the conduct of the investigation.

(f)(1) Any Federal employee, employee of a contractor of a Federal agency, licensee, or other person visiting an affected facility for the purpose of conducting official business, who possesses an active NRC or DOE–Q access authorization or an equivalent Federal security clearance granted by another Federal agency ("Top Secret") based on a comparable full field background investigation may be permitted, in accordance with § 11.11, the same level of unescorted access that an NRC–U special nuclear material access authorization would afford.

(2) Any Federal employee, employee of a contractor of a Federal agency, licensee, or other person visiting an affected facility for the purpose of conducting official business, who possesses an active NRC or DOE–L access authorization or an equivalent security clearance granted by another Federal agency ("Secret") based on a background investigation or national agency check and credit investigation may be permitted, in accordance with § 11.11, the same level of unescorted access that an NRC–R special nuclear material access authorization would afford. An NRC or DOE–L access authorization or an equivalent security clearance ("Secret"), based on a background investigation or national agency check, which was granted or being processed by another Federal agency prior to [effective date of final rule] is acceptable to meet this requirement.

4. Section 11.16 is revised to read as follows:

§ 11.16 Cancellation of request for special nuclear material acces authorization.

When a request for an individual's access authorization is withdrawn or cancelled, the licensee shall notify the Chief, Personnel Security Branch, NRC Division of Security immediately, by telephone, so that the full field investigation or national agency check and credit investigation may be discontinued. The caller shall provide the full name and date of birth of the individual, the date of request, and the type of access authorization originally requested ("U" or "R"). The licensee shall promptly submit written confirmation of the telephone notification to the Personnel Security Branch, NRC Division of Security. A portion of the fee for the "U" special nuclear material access authorization may be refunded depending upon the status of the full field investigation at the time of withdrawal or cancellation.

PART 25—ACCESS AUTHORIZATION FOR LICENSEE PERSONNEL

5. The authority citation for part 25 continues to read as follows:

Authority: Secs. 145, 161, 69 Stat. 942, 948, as amended (42 U.S.C. 2165, 2201), sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); E.O. 10865, as amended, 3 CFR 1959–1963 COMP., p. 398 (50 U.S.C. 401, note), E.O. 12356, 47 FR 14874, April 6, 1982.

Appendix A also issued under 96 Stat. 1051 (31 U.S.C. 9701).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 25.13, 25.17(a), 25.33 (b) and (c) are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)), and §§ 25.13 and 25.33(b) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

6. In § 25.5, the definition of "L" is revised to read as follows:

§ 25.5 Definitions.

* * * * *

"L" access authorization means an access authorization granted by the Commission which is normally based on a national agency check and credit investigation (NAC&C) or national agency check, inquiries and credit investigation (NACIC) conducted by the Office of Personnel Management.

* * * * *

7. Section 25.25 is revised to read as follows:

§ 25.25 Cancellation of requests for access authorization.

When a request for an individual's access authorization is withdrawn or cancelled, the requester shall notify the NRC Division of Security immediately, by telephone, so that the full field investigation or national agency check and credit investigation may be discontinued. The caller shall supply the full name and date of birth of the individual, the date of request, and the type of access authorization originally requested ("Q" or "L"). The telephone notification must be promptly confirmed in writing.

8. Appendix A is revised to read as follows:

APPENDIX A.—FEES FOR NRC ACCESS AUTHORIZATION

Category	Fee
Initial "L" Access Authorization	[1] $40
Reinstatement of "L" Access Authorization	[1] 40
Extension or Transfer of "L" Access Authorization	[1]40
Initial "Q" Access Authorization	2,415
Initial "Q" Access Authorization (expedited processing)	2,932
Reinstatement of "Q" Access Authorization	[2] 2,415
Reinstatement of "Q" Access Authorization (expedited processing)	[2] 2,932
Extension or Transfer of "Q"	[2] 2,415
Extension or Transfer of "Q" (expedited processing)	[2] 2,932

[1] If the NRC determines, based on its review of available data, that a full field investigation is necessary, a fee of $2,415 will be assessed prior to the conduct of the investigation.

[2] Full fee will only be charged if investigation is required.

PART 95—SECURITY FACILITY APPROVAL AND SAFEGUARDING OF NATIONAL SECURITY INFORMATION AND RESTRICTED DATA

9. The authority citation for part 95 continues to read as follows:

Authority: Secs. 145, 161, 68 Stat. 942, 948, as amended (42 U.S.C. 2165, 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); E.O. 10865, as amended, 3 CFR 1959–1963 COMP., p. 398 (50 U.S.C. 401, note); E.O. 12356, 47 FR 14874, April 6, 1982.

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 95.13, 95.15(a), 95.25, 95.27, 95.29(b), 95.31, 95.33, 95.35, 95.37, 95.39, 95.41, 95.43, 95.45, 95.47, 95.51, 95.53, and 95.57 are also issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)).

10. In § 95.5, the definition of "L" is revised to read as follows:

§ 95.5 Definitions.

* * * * *

"L" access authorization means an access authorization granted by the Commission which is normally based on a national agency check and credit investigation (NAC&C) or national agency check, inquirires and credit investigation (NACIC) conducted by the Office of Personnel Management.

* * * * *

Dated at Rockville, Maryland this 19th day of March, 1990.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 90–7201 Filed 3–28–90; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 200, 201, 207, 211, 225, 226, 250, 299, 310, 312, 314, 320, 329, 330, 331, 361, 369, 429, 431, 433, 440, 441, 442, 444, 446, 448, 449, 452, and 455

[Docket No. 89N–0058]

Human and Veterinary Drugs; Editorial Amendments

AGENCY: Food and Drug Administration; HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending certain of its human and veterinary drug regulations to correct cross-references, to update titles, mailing symbols, and addresses of certain organizations, and to make minor editorial changes. This action will improve the accuracy and clarity of the regulations.

EFFECTIVE DATE: March 29, 1990.

FOR FURTHER INFORMATION CONTACT: Lola E. Batson, Center for Drug Evaluation and Research (HFD–365), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8012.

SUPPLEMENTARY INFORMATION: FDA is amending certain of its human and veterinary drug regulations to correct cross-references, to update titles, mailing symbols, and addresses of certain organizations, and to make minor editorial changes.

The amendments are wholly editorial in nature. For this reason, FDA finds for good cause that notice and public procedure and delayed effective date are unnecessary (5 U.S.C. 553 (b)(B) and (d)).

List of Subjects

21 CFR Part 200

Drugs, Prescription drugs.

21 CFR Part 201

Drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 207

Drugs, Reporting and recordkeeping requirements.

21 CFR Part 211

Drugs, Labeling, Laboratories, Packaging and containers, Prescription drugs, Reporting and recordkeeping requirements, Warehouses.

21 CFR Parts 225, 226

Animal drugs, Animal feeds, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

21 CFR Parts 250, 299

Drugs.

21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 312

Drugs, Exports, Imports, Investigations, Labeling, Medical research, Reporting and recordkeeping requirements, Safety.

21 CFR Part 314

Administrative practice and procedure, Confidential business information, Drugs, Reporting and recordkeeping requirements.

21 CFR Part 320

Drugs, Reporting and recordkeeping requirements.

21 CFR Part 329

Drugs, Labeling.

21 CFR Part 330

Over-the-counter drugs.

21 CFR Part 331

Labeling, Over-the-counter drugs.

21 CFR Part 361

Medical research, Prescription drugs, Radiation protection.

21 CFR Part 369

Labeling, Medical devices, Over-the-counter drugs.

21 CFR Part 429

Administrative practice and procedure, Drugs, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

21 CFR Part 431

Administrative practice and procedure, Antibiotics, Confidential business information, Reporting and recordkeeping requirements.

21 CFR Part 433

Antibiotics, Labeling, Reporting and recordkeeping requirements.

21 CFR Parts 440, 441, 442, 444, 446, 448, 449, 452, 455

Antibiotics.

Therefore, under the Federal Food, and Drug, and Cosmetic Act, the Public Health Service Act, the Administrative Procedure Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 200, 201, 207, 211, 225, 226, 250, 299, 310, 312, 314, 320, 329, 330, 331, 361, 369, 429, 431, 433, 440, 441, 442, 444, 446, 448, 449, 452, and 455 are amended as follows:

PART 200—GENERAL

1. The authority citation for 21 CFR part 200 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 508, 515, 701, 704, 705, of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 358, 360e, 371, 374, 375).

§ 200.10 [Amended]

2. Section 200.10 *Contract facilities (including consulting laboratories) utilized as extramural facilities by pharmaceutical manufacturers* is amended in paragraph (c) by removing "Notice of Claimed Exemption for Investigational New Drug" and replacing it with "Investigational New Drug Application".

PART 201—LABELING

3. The authority citation for 21 CFR part 201 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 508, 510, 512, 701, 704, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 358, 360, 360b, 371, 374, 376); secs. 215, 301, 351, 354–360F, 361 of the Public Health Service Act (42 U.S.C. 216, 241, 262, 263b–263n, 264).

§ 201.57 [Amended]

4. Section 201.57 *Specific requirements on content and format of labeling for human prescription drugs* is amended in paragraphs (b)(2)(ii), (c)(2), (c)(3)(i), (c)(3)(v), (f)(9), (g)(2), (g)(4), and (m)(1) by removing "§ 314.111(a)(5)(ii)" and replacing it with "§ 314.126(b)" everywhere that it appears.

5. Section 201.58 is revised to read as follows:

§ 201.58 Requests for waiver of requirement for adequate and well-controlled studies to substantiate certain labeling statements.

A request under §§ 201.57 (b)(2)(ii), (c)(2), (c)(3)(i), (c)(3)(v), (f)(9), and (g)(4) for a waiver of the requirements of § 314.126(b) of this chapter shall be submitted in writing as provided in § 314.126(b) to the Director, Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20587, or, if applicable, the Director, Center for Biologics Evaluation and Research, 8800 Rockville Pike, Bethesda, MD 20892. The waiver shall be granted or denied in writing by such Director or the Director's designee.

§ 201.59 [Amended]

6. Section 201.59 *Effective date of §§ 201.56, 201.57, 201.100(d)(3), and 201.100(e)* is amended in paragraph (a)(2) by removing "5 or 6," in paragraph (a)(3) by removing "antibiotic form 6" and replacing it with "antibiotic form", and in the table in paragraph (a)(3) under the heading "BIOLOGICS" by removing the mail routing code "HFN–825" and replacing it with "HFB–240", everywhere that it appears, and under the heading "NEW DRUGS AND ANTIBIOTIC DRUGS" by removing the mail routing codes "HFN–110", "HFN–120", "HFN–150", "HFN–160", "HFN–810", and "HFN–815" and replacing them with "HFD–110", "HFD–120", "HFD–150", "HFD–160", "HFD–510", and "HFD–520", respectively, everywhere that they appear.

§ 201.122 [Amended]

7. Section 201.122 *Drugs for processing, repacking, or manufacturing* is amended in paragraph (b) by remvoing "§ 312.1" and replacing it with "part 312".

§ 201.200 [Amended]

8. Section 201.200 *Disclosure of drug efficacy study evaluations in labeling and advertising* is amended in paragraph (d) by removing "§§ 314.8 (d) and (e)" and replacing it with "§ 314.70" and by removing "§ 514.50" and replacing it with "§ 514.8".

§ 201.305 [Amended]

9. Section 201.305 *Isoproterenol inhalation preparations (pressurized aerosols, nebulizers, powders) for human use; warnings* is amended in paragraph (d)(2) by removing "items 4, 5, 6, 7, 8, and 9 of the new-drug application form (form FD–356H set forth in § 314.1(c)(2) of this chapter)" and replacing it with "§ 314.50 of this chapter".

§ 201.306 [Amended]

10. Section 201.306 *Potassium salt preparations intended for oral ingestion by man* is amended in paragraph (a)(2) by removing "Items 2, 3, 4, 6, 7, and 9 of the new-drug application form contained in § 314.1(c)" and replacing it with "§ 314.50".

§ 201.307 [Amended]

11. Section 201.307 *Chlorcyclizine, cyclizine, meclizine; warnings; labeling requirements* is amended in paragraph (c)(3) by removing "form contained in § 314.1(c) of this chapter" and replacing it with "(see § 314.50 of this chapter)".

PART 207—REGISTRATION OF PRODUCERS OF DRUGS AND LISTING OF DRUGS IN COMMERCIAL DISTRIBUTION

12. The authority citation for 21 CFR part 207 continues to read as follows:

Authority: Secs. 301, 501, 502, 505, 506, 507, 510, 512, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331, 351, 352, 355, 356, 357, 360, 360b, 371, 374); sec. 351 of the Public Health Service Act (42 U.S.C. 262).

§ 207.3 [Amended]

13. Section 207.3 *Definitions* is amended in paragraph (a)(5) by removing "§ 312.1" and replacing it with "part 312 of this chapter".

§ 207.7 [Amended]

14. Section 207.7 *Establishment registration and product listing for human blood and blood products and for medical devices* is amended in paragraph (a) by removing "Drug Listing Branch, Office of Compliance (HFN–315), Center for Drugs and Biologics" and replacing it with "Division of Product Certification, Office of Biological Product Review (HFB–240), Center for Biologics Evaluation and Research, 8800 Rockville Pike, Bethesda, MD 20892", and in paragraph (d) by removing "(HFN–315), Center for Drugs and Biologics" and replacing it with "(HFD–334), Center for Drug Evaluation and Research".

§ 207.20 [Amended]

15. Section 207.20 *Who must register and submit a drug list* is amended in paragraph (c) by removing "(antibiotic Form 5 or 6)".

§ 207.21 [Amended]

16. Section 207.21 *Times for registration and drug listing* is amended in paragraph (a) by removing "(antibiotic Form 5 or 6)".

§ 207.22 [Amended]

17. Section 207.22 *How and where to register and list drugs* is amended in paragraphs (a) and (b) by removing "(HFN–315), Center for Drugs and Biologics" and replacing it with "(HFD–334), Center for Drug Evaluation and Research".

§ 207.25 [Amended]

18. Section 207.25 *Information required in registration and drug listing* is amended in paragraph (b)(2) by removing "(antibiotic Form 5 or 6)".

§ 207.26 [Amended]

19. Section 207.26 *Amendments to registration* is amended by removing "FD–2656" and replacing it with "FDA–2656".

§ 207.35 [Amended]

20. Section 207.35 *Notification of registrant; drug establishment registration number and drug listing number* is amended in paragraph (b)(3)(v) by removing "(antibiotic Form 5 or 6)".

§ 207.37 [Amended]

21. Section 207.37 *Inspection of registrations and drug listings* is amended in the introductory text of paragraph (a), and in paragraph (b) by removing "(HFN–315)" and replacing it with "(HFD–334)" and by removing "Center for Drugs and Biologics" and replacing it with "Center for Drug Evaluation and Research", everywhere that it appears.

§ 207.40 [Amended]

22. Section 207.40 *Drug listing requirements for foreign drug establishments* is amended in paragraph (b) by removing "§ 312.1" and replacing it with "part 312 of this chapter".

PART 211—CURRENT GOOD MANUFACTURING PRACTICE FOR FINISHED PHARMACEUTICALS

23. The authority citation for 21 CFR part 211 continues to read as follows:

Authority: Secs. 201, 501, 502, 505, 506, 507, 512, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 355, 356, 357, 360b, 371, 374).

§ 211.176 [Amended]

24. Section 211.176 *Penicillin contamination* is amended by removing "Division of Drug Biology (HFN–170), Center for Drugs and Biologics" and replacing it with "Division of Research and Testing (HFD–470), Center for Drug Evaluation and Research".

§ 211.194 [Amended]

25. Section 211.194 *Laboratory records* is amended in the footnote to paragraph (a)(2) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20204" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201–3301".

PART 225—CURRENT GOOD MANUFACTURING PRACTICE FOR MEDICATED FEEDS

26. The authority citation for 21 CFR part 225 continues to read as follows:

Authority: Secs. 501, 502, 512, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 352, 360b, 371, 374).

§ 225.58 [Amended]

27. Section 225.58 *Laboratory controls* is amended in paragraph (b)(1) by replacing the period with a comma after the first sentence, and by removing "At" and replacing it with "at" at the beginning of the second sentence.

PART 226—CURRENT GOOD MANUFACTURING PRACTICE FOR TYPE A MEDICATED ARTICLES

28. The authority citation for 21 CFR part 226 continues to read as follows:

Authority: Secs. 501, 502, 512, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 352, 360b, 371, 374).

§ 226.58 [Amended]

29. Section 226.58 *Laboratory controls* is amended in the footnote to paragraph (e) by removing "P.O. Box 540; Ben Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201–3301".

PART 250—SPECIAL REQUIREMENTS FOR SPECIFIC HUMAN DRUGS

30. The authority citation for 21 CFR part 250 continues to read as follows:

Authority: Secs. 201, 306, 402, 502, 503, 505, 601(a), 602 (a) and (c), 701, 705(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 336, 342, 352, 353, 355, 361(a), 362 (a) and (c), 371, 375(b)).

31. Section 250.10 is amended by revising paragraph (c) to read as follows:

§ 250.10 Oral prenatal drugs containing fluorides intended for human use.

* * * * *

(c) A completed and signed "Investigational New Drug Application," set forth in part 312 of this chapter, must be submitted to cover clinical investigations designed to obtain evidence that such preparations are effective for such use.

* * * * *

32. Section 250.103 is amended by revising paragraph (d) to read as follows:

§ 250.103 Thorium dioxide for drug use.

* * * * *

(d) A new drug application will be regarded as approvable if it contains appropriate labeling conforming to the provisions of paragraph (c) of this section and satisfactory information of the kinds required by § 314.50 of this chapter.

33. Section 250.106 is amended by revising paragraph (c) to read as follows:

§ 250.106 Cobalt preparations intended for use by man.

* * * * *

(c) A completed and signed "Investigational New Drug Application," set forth in part 312 of this chapter, must be submitted to cover clinical investigations to obtain evidence that such preparations are safe and effective for any purpose.

* * * * *

§ 250.250 [Amended]

34. Section 250.250 *Hexachlorophene, as a component of drug and cosmetic products* is amended in the introductory text of paragraph (c)(4) by removing "Bureau of Drugs" and replacing it with "Center for Drug Evaluation and Research", in paragraph (c)(4)(ii) by removing "§ 314.8(d)" and replacing it with "§ 314.70(c)(2)", and in paragraph (c)(4)(v) by removing "314.1" and replacing it with "314.50" in the two places that it appears.

PART 299—DRUGS; OFFICIAL NAMES AND ESTABLISHED NAMES

35. The authority citation for 21 CFR part 299 continues to read as follows:

Authority: Secs. 301, 501, 502, 505, 508, 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331, 351, 352, 355, 358, 360b, 371).

§ 299.4 [Amended]

36. Section 299.4 *Established names for drugs* is amended in paragraph (b) by removing "section 502(e)(2)" and replacing it with "section 502(e)(3)" and in paragraph (d) by removing "'Notice of Claimed Investigational Exemption for a New Drug'" and replacing it with "'Investigational New Drug Applications'".

PART 310—NEW DRUGS

37. The authority citation for 21 CFR part 310 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 512–516, 520, 601(a), 701, 704, 705, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 360b–360f, 360j, 361(a), 371, 374, 375, 376); secs. 215, 301, 302(a), 351, 354–360F of the Public Health Service Act (42 U.S.C. 216, 241, 242(a), 262, 263b–263n).

§ 310.6 [Amended]

38. Section 310.6 *Applicability of "new drug" or safety or effectiveness findings in drug efficacy study implementation notices and notices of opportunity for hearing to identical, related, and similar drug products* is amended in paragraph (e) by removing "Center for Drugs and Biologics" and "HFN–300" and replacing them with "Center for Drug Evaluation and Research" and "HFD–300", respectively.

39. Section 310.103 is amended by revising paragraph (b) to read as follows:

§ 310.103 New drug substances intended for hypersensitivity testing.

* * * * *

(b) When the requested new drug substance is intended for investigational use in humans or the substance is legally available only under the investigational drug provisions of part 312 of this chapter, the submission of an "Investigational New Drug Application" (IND) is required. The Food and Drug Administration will offer assistance to any practitioner wishing to submit an Investigational New Drug Application.

* * * * *

§ 310.305 [Amended]

40. Section 310.305 *Records and reports concerning adverse drug experiences on marketed prescription drugs for human use without approved new drug applications* is amended in paragraphs (c)(2) and (d)(4) by removing "Division of Drug and Biological Product Experience (HFN–730), Center for Drugs and Biologics" and replacing it with "Division of Epidemiology and Surveillance (HFD–730), Center for Drug Evaluation and Research", and in paragraph (d)(3)(ii) by removing "Division of Drug and Biological Product Experience (HFN–730)" and replacing it with "Division of Epidemiology and Surveillance (HFD–730)".

§ 310.500 [Amended]

41. Section 310.500 *Digoxin products for oral use; conditions for marketing* is amended in the introductory text of paragraph (a)(1) by removing "§ 314.1(f)" and replacing it with "§ 314.50", in the introductory text of paragraph (a)(1)(vii) by removing "505(j)" and replacing it with "505(k)", in paragraph (d) by removing "Center for Drugs and Biologics (HFN–220)" and replacing it with "Center for Drug Evaluation and Research (HFD–420)", in paragraph (f) by removing "Center for Drugs and Biologics, Division of Generic Drugs (HFN–230)" and replacing it with "Center for Drug Evaluation and Research, Office of Generic Drugs", in the introductory text of paragraph (h) by removing "505(j)" and replacing it with "505(k)" and in paragrpah (h)(3)(iv) by removing "§ 314.1" and "Center for Drugs and Biologics, Office of Drug Research and Review (HFN–100)" and replacing them with "§ 314.50" and "Center for Drug Evaluation and Research, Office of Drug Evaluation I (HFD–100)", respectively.

§ 310.502 [Amended]

42. Section 310.502 *Intrauterine devices for human use for the purpose of contraception* is amended in paragraph (a)(2) by removing "'Notice of Claimed Investigational Exemption for a New Drug' (Form FD–1571 set forth in § 312.1(a)(2) of this chapter)" and replacing it with "'Investigational New Drug Application' set forth in part 312 of this chapter" and in paragraph (b)(4) by removing "§ 314.8" and replacing it with "§ 314.70".

§ 310.503 [Amended]

43. Section 310.503 *Requirements regarding certain radioactive drugs* is amended in paragraph (a) by removing "§ 312.1" and replacing it with "part 312", in paragraph (d)(3) by removing "'Notice of Claimed Investigational Exemption for a New Drug'" and replacing it with "'Investigational New Drug Application'" in the two places that it appears, in paragraph (e) by removing "§ 312.1" and replacing it with "part 312", in paragraphs (f)(3), (f)(5)(i), and (f)(5)(ii) by removing "'Notice of Claimed Investigational Exemption for a New Drug'" and replacing it with "'Investigational New Drug Application'" everywhere that it appears, and in paragraphs (f)(3) and (f)(5) by removing "Bureau of Drugs" and "Bureau of Biologics" and by replacing them with "Center for Drug Evaluation and Research", and "Center for Biologics Evaluation and Research", respectively, wherever they appear.

44. Section 310.504 is amended by revising the last sentence in paragraph (f) to read as follows:

§ 310.504 Amphetamines (amphetamine, dextroamphetamine, and their salts and levamfetamine and its salts) for human use.

* * * * *

(f) * * * Any other person who intends to market such drug is required to submit to the Food and Drug Administration an abbreviated application under § 314.55 of this chapter.

* * * * *

45. Section 310.506 is amended by revising paragraph (c) to read as follows:

§ 310.506 Use of vinyl chloride as an ingredient, including propellant, of aerosol drug products.

* * * * *

(c) Clinical investigations designed to obtain evidence that any aerosol drug preparation containing vinyl chloride as an ingredient, including propellant, is safe and effective for the purpose intended, must comply with the requirements and procedures governing the use of investigational new drugs set forth in part 312 of this chapter.

* * * * *

46. Section 310.507 is amended by revising paragraph (c) to read as follows:

§ 310.507 Aerosol drug products for human use containing 1,1,1-trichloroethane.

* * * * *

(c) Clinical investigations designed to obtain evidence that any aerosol drug product containing trichloroethane and labeled, represented, or advertised for use by inhalation either directly or indirectly is safe and effective for the purposes intended must comply with the requirements and procedures governing the use of investigational new drugs set forth in part 312 of this chapter.

* * * * *

47. Section 310.508 is amended by revising paragraph (c) to read as follows:

§ 310.508 Use of certain halogenated salicylanilides as an inactive ingredient in drug products.

* * * * *

(c) Clinical investigations designed to obtain evidence that any drug product containing a halogenated salicylanilide as an ingredient at any level for any purpose is safe and effective for the purpose intended must comply with the requirements and procedures governing the use of investigational new drugs set forth in part 312 of this chapter.

* * * * *

§ 310.509 [Amended]

48. Section 310.509 *Parenteral drug products in plastic containers* is amended in paragraph (a) by removing "'Notice of Claimed Investigational Exemption for a New Drug' (Form FD–1571) set forth in § 312.1" and replacing it with "'Investigational New Drug Application' set forth in part 312", in paragraph (b) by removing "505(j)" and replacing it with "505(k)", in paragraph (e) by removing "(HFN–160), Center for Drugs and Biologics" and replacing it with "(HFD–160), Center for Drug Evaluation and Research", and in

paragraph (i) by removing "§ 314.8(d)" and replacing it with "§ 314.70(c)(2)".

49. Section 310.510 is amended by revising paragraph (c) to read as follows:

§ 310.510 Use of aerosol drug products containing zirconium.

* * * * *

(c) Clinical investigations designed to obtain evidence that any aerosol drug product containing zirconium is safe for the purpose intended must comply with the requirements and procedures governing the use of investigational new drugs set forth in part 312 of this chapter.

* * * * *

§ 310.513 [Amended]

50. Section 310.513 *Chloroform, use as an ingredient (active or inactive) in drug products* is amended in paragraph (c)(3) by removing "§ 314.8(e)" and replacing it with "§ 314.70(c)", in paragraph (d) by removing " 'Notice of Claimed Investigational Exemption for a New Drug' (IND notice)" and replacing it with " 'Investigational New Drug Application' (IND)" and by removing the word "notice" following the term "IND", and in paragraph (e) by removing the word "notice" in the two places that it appears.

§ 310.515 [Amended]

51. Section 310.515 *Estrogens; labeling directed to the patient* is amended in paragraph (g) by removing "§ 314.8(d)" and replacing it with "§ 314.70(c)".

52. Section 310.519 is amended by revising paragraph (c) to read as follows:

§ 310.519 Drug products marketed as over-the-counter (OTC) daytime sedatives.

* * * * *

(c) Clinical investigations designed to obtain evidence that any drug product labeled, represented, or promoted as an OTC daytime sedative (or any similar or related indication) is safe and effective for the purpose intended must comply with the requirements and procedures governing the use of investigational new drugs set forth in part 312 of this chapter.

* * * * *

53. Section 310.525 is amended by revising paragraph (c) to read as follows:

§ 310.525 Sweet spirits of nitre drug products.

* * * * *

(c) Clinical investigations designed to obtain evidence that any drug product containing sweet spirits of nitre for any use is safe and effective for the purpose intended must comply with the requirements and procedures governing the use of investigational new drugs set forth in part 312 of this chapter.

* * * * *

54. Section 310.526 is amended by revising paragraph (c) to read as follows:

§ 310.526 Camphorated oil drug products.

* * * * *

(c) Clinical investigations designed to obtain evidence that any camphorated oil drug product, any drug product containing camphor in oil, or any other drug product containing camphor that is represented, suggested, or purported to be camphorated oil, e.g., "camphor liniment," "camphor oil," "camphorated liniment," is safe for the purpose intended must comply with the requirements and procedures governing the use of investigational new drugs set forth in part 312 of this chapter.

* * * * *

55. Section 310.529 is amended by revising paragraph (c) to read as follows:

§ 310.529 Drug products containing active ingredients offered over-the-counter (OTC) for oral use as insect repellents.

* * * * *

(c) Clinical investigations designed to obtain evidence that any drug product labeled, represented, or promoted OTC for oral use as an insect repellent is safe and effective for the purpose intended must comply with the requirements and procedures governing the use of investigational new drugs set forth in part 312 of this chapter.

* * * * *

56. Section 310.533 is amended by revising paragraph (c) to read as follows:

§ 310.533 Drug products containing active ingredients offered over-the-counter (OTC) for human use as an anticholinergic in cough-cold drug products.

* * * * *

(c) Clinical investigations designed to obtain evidence that any cough-cold drug product labeled, represented, or promoted for OTC use as an anticholinergic is safe and effective for the purpose intended must comply with the requirements and procedures governing the use of investigational new drugs set forth in part 312 of this chapter.

* * * * *

57. Section 310.534 is amended by revising paragraph (c) to read as follows:

§ 310.534 Drug products containing active ingredients offered over-the-counter (OTC) for human use as oral wound healing agents.

* * * * *

(c) Clinical investigations designed to obtain evidence that any drug product labeled, represented, or promoted for OTC use as an oral wound healing agent is safe and effective for the purpose intended must comply with the requirements and procedures governing the use of investigational new drugs set forth in part 312 of this chapter.

* * * * *

PART 312—INVESTIGATIONAL NEW DRUG APPLICATION

58. The authority citation for 21 CFR part 312 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 371); sec. 351 of the Public Health Service Act (42 U.S.C. 262).

§ 312.32 [Amended]

59. Section 312.32 *IND safety reports* is amended in paragraph (c)(1) by adding the designation (i) after the hearing for paragraph (c)(1), and in newly designated paragraph (c)(1)(i) and in paragraphs (c)(2) and (c)(3) by removing "Center for Drugs and Biologics" and replacing it with "Center for Drug Evaluation and Research or the Center for Biologics Evaluation and Research".

60. Section 312.36 is amended by revising the fourth and fifth sentences to read as follows:

§ 312.36 Emergency use of an investigational new drug.

* * * For investigational biological drugs, the request should be directed to the Division of Biological Investigational New Drugs (HFB–230), Center for Biologics Evaluation and Research, 8800 Rockville Pike, Bethesda, MD 20892, 301–443–4864. For all other investigational drugs, the request for authorization should be directed to the Document Management and Reporting Branch (HFD–53), Center for Drug Evaluation and Research, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4320. * * *

* * * * *

§ 312.44 [Amended]

61. Section 312.44 *Termination* is amended in paragraph (d) by removing "Director of the Center for Drugs and Biologics" and replacing it with "Director of the Center for Drug Evaluation and Research or the Director

of the Center for Biologics Evaluation and Research".

§ 312.47 [Amended]

62. Section 312.47 *Meetings* is amended in paragraph (b)(1)(iv) by removing "4850.6" and replacing it with "4850.7" and in paragraph (b)(1)(v) by removing "Center for Drugs and Biologics" and replacing it with "Center for Drug Evaluation and Research or Center for Biologics Evaluation and Research".

§ 312.48 [Amended]

63. Section 312.48 *Dispute resolution* is amended in paragraphs (b) and (c)(1) by removing "Center for Drugs and Biologics" and replacing it with "Center for Drug Evaluation and Research or Center for Biologics Evaluation and Research".

§ 312.70 [Amended]

64. Section 312.70 *Disqualification of a clinical investigator* is amended in paragraph (a) by removing "Center for Drugs and Biologics" and replacing it with "Center for Drug Evaluation and Research or the Center for Biologics Evaluation and Research" in the two places that it appears.

§ 312.140 [Amended]

65. Section 312.140 *Address for correspondence* is amended in paragraph (a) in the first sentence by removing "Center for Drugs and Biologics" and replacing it with "Center for Drug Evaluation and Research" and in the second sentence by removing "Center for Drugs and Biologics" and replacing it with "Center for Drug Evaluation and Research or the Center for Biologics Evaluation and Research", in paragraph (b) by removing "Office of Biologics Research and Review (HFN–823), Center for Drugs and Biologics" and "20205" and replacing them with "Division of Biological Investigational New Drugs (HFB–230), Center for Biologics Evaluation and Research" and "20892", respectively, and in paragraph (c) by removing "(HFN–150), Office of Drug Research and Review, Center for Drugs and Biologics" and replacing it with "(HFD–150), Center for Drug Evaluation and Research".

66. Section 312.145 is amended by revising paragraph (b) to read as follows:

§ 312.145 Guidelines.

* * * * *

(b) The Center for Drug Evaluation and Research and the Center for Biologics Evaluation and Research maintain lists of guidelines that apply to the Centers' regulations. The lists state how a person can obtain a copy of each guideline. A request for a copy of the lists should be directed to the Legislative, Professional, and Consumer Affairs Branch (HFD–365), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, for drug products, and the Congressional, Consumer, and International Affairs Staff (HFB–142), Center for Biologics Evaluation and Research, Food and Drug Administration, Park Bldg., Rm. 158, 5600 Fishers Lane, Rockville, MD 20857, for biological products.

PART 314—APPLICATIONS FOR FDA APPROVAL TO MARKET A NEW DRUG OR AN ANTIBIOTIC DRUG

67. The authority citation for 21 CFR part 314 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 371, 376).

68. Section 314.50 is amended in paragraph (f)(1) by revising the first sentence to read as follows:

§ 314.50 Content and format of an application.

* * * * *

(f) * * *

(1) * * * The application is required to contain tabulations of the data from each adequate and well-controlled study under § 314.126 (Phase 2 and Phase 3 studies as described in §§ 312.21 (b) and (c) of this chapter), tabulations of the data from the earliest clinical pharmacology studies (Phase 1 studies as described in § 312.21(a) of this chapter), and tabulations of the safety data from other clinical studies. * * *

* * * * *

§ 314.80 [Amended]

69. Section 314.80 *Postmarketing reporting of adverse drug experiences* is amended in paragraph (f)(3) by removing "(HFN–730)" and replacing it with "(HFD–730)" and in paragraph (f)(4) by removing "(HFN–730), Center for Drugs and Biologics" and replacing it with "(HFD–730), Center for Drug Evaluation and Research".

§ 314.81 [Amended]

70. Section 314.81 *Other postmarketing reports* is amended in paragraph (a) by removing "505(j)" and replacing it with "505(k)".

§ 314.106 [Amended]

71. Section 314.106 *Foreign data* is amended in paragraph (a) by removing "§ 312.20" and replacing it with "§ 312.120 of this chapter".

§ 314.110 [Amended]

72. Section 314.110 *Approvable letter to the applicant* is amended in paragraph (c) by removing "(HFN–360), Center for Drugs and Biologics" and replacing it with "(HFD–360), Center for Drug Evaluation and Research".

§ 314.120 [Amended]

73. Section 314.120 *Not approvable letter to the applicant* is amended in paragraph (c) by removing "(HFN–360), Center for Drugs and Biologics" and replacing it with "(HFD–360), Center for Drug Evaluation and Research".

§ 314.126 [Amended]

74. Section 314.126 *Adequate and well-controlled studies* is amended in paragraph (c) by removing "Center for Drugs and Biologics" and replacing it with "Center for Drug Evaluation and Research".

§ 314.150 [Amended]

75. Section 314.150 *Withdrawal of approval of an application* is amended in paragraph (b)(1) by removing "505(j)" and replacing it with "505(k)".

§ 314.200 [Amended]

76. Section 314.200 *Notice of opportunity for hearing; notice of participation and request for hearing; grant or denial of hearing* is amended in the introductory text of paragraph (a) by removing "Center for Drugs and Biologics" and replacing it with "Center for Drug Evaluation and Research", in paragraph (a)(3) by removing "(HFN–310), Center for Drugs and Biologics" and replacing it with "(HFD–310), Center for Drug Evaluation and Research", and in paragraphs (f), (g)(2), and (g)(3) by removing "Center for Drugs and Biologics" and replacing it with "Center for Drug Evaluation and Research" everywhere that it appears.

§ 314.300 [Amended]

77. Section 314.300 *Procedure for the issuance, amendment, or repeal of regulations* is amended in paragraphs (b)(7), (b)(8)(ii), and (b)(8)(iii) by removing "Center for Drugs and Biologics" and replacing it with "Center for Drug Evaluation and Research" everywhere that it appears.

§ 314.430 [Amended]

78. Section 314.430 *Availability for public disclosure of data and information in an application* is amended in paragraphs (b), (e)(2)(ii)(*a*), and (e)(2)(ii)(*b*) by removing "Center for Drugs and Biologics" and replacing it with "Center for Drug Evaluation and Research" and in paragraphs (f)(5) and (f)(6) by removing "505(j)" and replacing

it with "505(k)" in the three places that it appears.

79. Section 314.440 is amended by revising the introductory text of paragraph (a) and the first two sentences in paragraph (a)(1), in paragraph (a)(2) by removing "Division of Generic Drugs (HFN–230)" and replacing it with "Office of Generic Drugs (HFD–230)", in paragraph (a)(3) by removing "(HFN–360)" and replacing it with "(HFD–360)", and by revising the introductory text of paragraph (b) to read as follows:

§ 314.440 Addresses for applications.

(a) Applicants shall send applications and other correspondence relating to matters covered by this part, except for products listed in paragraph (b) of this section or as otherwise directed, to the Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, and directed to the appropriate office identified below:

(1) An application under § 314.50 submitted for filing should be directed to the Document and Records Section, 12420 Parklawn Drive, Rockville, MD 20852. Applicants may obtain folders for binding applications from the Forms and Publications Warehouse, 12100 Parklawn Drive, Rockville, MD 20852. * * *

* * * * *

(b) Applicants shall send applications and other correspondence relating to matters covered by this part for the drug products listed below to the Division of Product Certification (HFB–240), Center for Biologics Evaluation and Research, Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892, except applicants shall send a request for an opportunity for a hearing under § 314.110 or § 314.120 on the question of whether there are grounds for denying approval of an application to the Director, Center for Biologics Evaluation and Research (HFB–1), at the same address.

* * * * *

80. Section 314.445 is amended by revising paragraph (b) to read as follows:

§ 314.445 Guidelines.

* * * * *

(b) The Center for Drug Evaluation and Research will maintain and make publicly available a list of guidelines that apply to the Center's regulations. The list states how a person can obtain a copy of each guideline. A request for a copy of the list should be directed to the Legislative, Professional, and Consumer Affairs Branch (HFD–365), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

PART 320—BIOAVAILABILITY AND BIOEQUIVALENCE REQUIREMENTS

81. The authority citation for 21 CFR part 320 continues to reads as follows:

Authority: Secs. 201, 501, 502, 505, 507, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 355, 357, 371).

§ 320.30 [Amended]

82. Section 320.30 *Inquiries regarding bioavailability requirements and review of protocols by the Food and Drug Administration* is amended in paragraph (c) by removing "Center for Drugs and Biologics, Division of Biopharmaceutics (HFN–220)" and replacing it with "Center for Drug Evaluation and Research, Division of Biopharmaceutics (HFD–420)".

83. Section 320.31 is amended by revising the section heading, in the introductory text of paragraph (a) and in paragraphs (c), (d), and (f) by removing " 'Notice of Claimed Investigational Exemption for a New Drug' " and replacing it with " 'Investigational New Drug Application' ", in paragraph (c) by removing "§ 312.1" and replacing it with "part 312", and in paragraph (d) by removing "§ 310.102" and replacing it with "part 50" to read as follows:

§ 320.31 Applicability of requirements regarding an "Investigational New Drug Application."

* * * * *

PART 329—HABIT-FORMING DRUGS

84. The authority citation for 21 CFR part 329 continues to read as follows:

Authority: Secs. 502, 503, 505, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352, 353, 355, 371).

§ 329.20 [Amended]

85. Section 329.20 *Exemption of certain habit-forming drugs from prescription requirements* is amended in paragraph (d) by removing "§ 166.8(a) of this chapter" and replacing it with "part 329".

PART 330—OVER-THE-COUNTER (OTC) HUMAN DRUGS WHICH ARE GENERALLY RECOGNIZED AS SAFE AND EFFECTIVE AND NOT MISBRANDED

86. The authority citation for 21 CFR part 330 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371).

§ 330.1 [Amended]

87. Section 330.1 *General conditions for general recognition as safe, effective and not misbranded* is amended in paragraph (f) by removing "§ 211.22" and replacing it with "§ 211.94".

§ 330.10 [Amended]

88. Section 330.10 *Procedures for classifying OTC drugs as generally recognized as safe and effective and not misbranded, and for establishing monographs* is amended in paragraph (a)(4)(ii) by removing "§ 314.111(a)(5)(ii)" and replacing it with "§ 314.126(b)".

§ 330.11 [Amended]

89. Section 330.11 *NDA deviations from applicable monograph* is amended by removing "§ 314.1(a)(2)" and replacing it with "§ 314.50".

§ 330.13 [Amended]

90. Section 330.13 *Conditions for marketing ingredients recommended for over-the-counter (OTC) use under the OTC drug review* is amended in paragraph (d)(2)(i) by removing "Center for Drugs and Biologics" and replacing it with "Center for Drug Evaluation and Research".

PART 331—ANTACID PRODUCTS FOR OVER-THE-COUNTER (OTC) HUMAN USE

91. The authority citation for 21 CFR part 331 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371).

§ 331.22 [Amended]

92. Section 331.22 *Reagent standardization* is amended by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., suite 400, Arlington, VA 22201–3301".

§ 331.30 [Amended]

93. Section 331.30 *Labeling of antacid products* is amended in paragraph (g) by removing "§ 300.1(g)" and replacing it with "§ 330.1(g)".

PART 361—PRESCRIPTION DRUGS FOR HUMAN USE GENERALLY RECOGNIZED AS SAFE AND EFFECTIVE AND NOT MISBRANDED: DRUGS USED IN RESEARCH

94. The authority citation for 21 CFR part 361 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 371); sec. 351

of the Public Health Service Act (42 U.S.C. 262).

§ 361.1 [Amended]

95. Section 361.1 *Radioactive drugs for certain research uses* is amended in paragraph (b)(2) by removing " 'Notice of Claimed Investigational Exemption for a New Drug' " and replacing it with " 'Investigational New Drug Application' ", in paragraphs (c)(1), (c)(3), (c)(4), and (d)(8) by removing "Center for Drugs and Biologics" and replacing it with "Center for Drug Evaluation and Research", wherever it appears, in paragraphs (c)(3), (c)(4), and (d)(8) by removing "HFN–150" and replacing it with "HFD–150", and in paragraph (e) by removing "§ 312.1" and replacing it with "part 312" in the two places that it appears.

PART 369—INTERPRETATIVE STATEMENTS RE WARNINGS ON DRUGS AND DEVICES FOR OVER-THE-COUNTER SALE

96. The authority citation for 21 CFR part 369 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 371).

§ 369.21 [Amended]

97. Section 369.21 *Drugs; warning and caution statements required by regulations* is amended in the second paragraph under the entry for "DRUGS IN DISPENSERS PRESSURIZED BY GASEOUS PROPELLANTS" by removing "part 2" and replacing it with "part 10".

PART 429—DRUGS COMPOSED WHOLLY OR PARTLY OF INSULIN

98. The authority citation for 21 CFR part 429 continues to read as follows:

Authority: Secs. 502, 506, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352, 356, 371).

§ 429.40 [Amended]

99. Section 429.40 *Requests for certification; samples; storage; approvals preliminary to certification* is amended in paragraph (a) by removing "Division of Drug Biology (HFN–170)" and replacing it with "Division of Research and Testing (HFD–470)".

PART 431—CERTIFICATION OF ANTIBIOTIC DRUGS

100. The authority citation for 21 CFR part 431 continues to read as follows:

Authority: Secs. 501, 502, 503, 505, 507, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 352, 353, 355, 357, 376); secs. 215, 301, 351 of the Public Health Service Act (42 U.S.C. 216, 241, 262); 5 U.S.C. 552.

§ 431.1 [Amended]

101. Section 431.1 *Requests for certification, check tests and assays, and working standards; information and samples required* is amended in paragraph (a) by removing "Division of Drug Biology (HFN–170)" and replacing it with "Division of Research and Testing (HFD–470)".

§ 431.50 [Amended]

102. Section 431.50 *Forms for certification or exemption of antibiotic drugs* is amended by removing "(HFN–333)" and replacing it with "(HFD–333)".

§ 431.51 [Amended]

103. Section 431.51 *Suspension of certification service* is amended in paragraph (d) by removing "§ 431.60" and replacing it with "§ 314.81 of this chapter".

§ 431.53 [Amended]

104. Section 431.53 *Fees* is amended in paragraph (h) by removing "Accounting Operations Branch" and replacing it with "Accounting Branch".

PART 433—EXEMPTIONS FROM ANTIBIOTIC CERTIFICATION AND LABELING REQUIREMENTS

105. The authority citation for 21 CFR part 433 continues to read as follows:

Authority: Secs. 502, 505, 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352, 355, 357).

§ 433.17 [Amended]

106. Section 433.17 *Exemption for investigational use* is amended by removing "§ 312.1" and replacing it with "part 312" in the two places that it appears.

PART 440—PENICILLIN ANTIBIOTIC DRUGS

107. The authority citation for 21 CFR part 440 continues to read as follows:

Authority: Sec. 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357).

§ 440.1a [Amended]

108. Section 440.1a *Sterile azlocillin sodium* is amended in the introductory text of paragraph (a)(3)(ii) by removing "National Center for Drugs and Biologics" and replacing it with "Center for Drug Evaluation and Research".

§ 440.2a [Amended]

109. Section 440.2a *Sterile amdinocillin* is amended in the introductory text of paragraph (a)(3)(ii) by removing "Center for Drugs and Biologics" and replacing it with "Center for Drug Evaluation and Research".

§ 440.103d [Amended]

110. Section 440.103d *Amoxicillin trihydrate and clavulanate potassium tablets* is amended in the introductory text of paragraph (a)(3)(ii) by removing "Center for Drugs and Biologics" and replacing it with "Center for Drug Evaluation and Research".

§ 440.103e [Amended]

111. Section 440.103e *Amoxicillin trihydrate and clavulanate potassium for oral suspension* is amended in the introductory text of paragraph (a)(3)(ii) by removing "Center for Drugs and Biologics" and replacing it with "Center for Drug Evaluation and Research".

§ 440.103f [Amended]

112. Section 440.103f *Amoxicillin trihydrate-clavulanate potassium chewable tablets* is amended in the introductory text of paragraph (a)(3)(ii) by removing "Center for Drugs and Biologics" and replacing it with "Center for Drug Evaluation and Research".

§ 440.209b [Amended]

113. Section 440.209b *Sterile ampicillin sodium and sulbactam sodium* is amended in the introductory text of paragraph (a)(3)(ii) by removing "Center for Drugs and Biologics" and replacing it with "Center for Drug Evaluation and Research".

§ 440.290b [Amended]

114. Section 440.290b *Sterile ticarcillin disodium and clavulanate potassium* is amended in the introductory text of paragraph (a)(3)(ii) by removing "Center for Drugs and Biologics" and replacing it with "Center for Drug Evaluation and Research".

PART 441—PENEM ANTIBIOTIC DRUGS

115. The authority citation for 21 CFR part 441 continues to read as follows:

Authority: Sec. 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357).

§ 441.20a [Amended]

116. Section 441.20a *Sterile imipenem monohydrate* is amended in the introductory text of paragraph (a)(3)(ii) by removing "Center for Drugs and Biologics" and replacing it with "Center for Drug Evaluation and Research".

§ 441.220 [Amended]

117. Section 441.220 *Imipenem monohydrate-cilastatin sodium for injection* is amended in the introductory text of paragraph (a)(3)(ii) by removing "Center for Drugs and Biologics" and

replacing it with "Center for Drug Evaluation and Research".

PART 442—CEPHA ANTIBIOTIC DRUGS

118. The authority citation for 21 CFR part 442 continues to read as follows:

Authority: Sec. 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357).

§ 442.10 [Amended]

119. Section 442.10 *Cefazolin* is amended in paragraph (a)(3)(ii) by removing "National Center for Drugs and Biologics" and replacing it with "Center for Drug Evaluation and Research".

§ 442.12 [Amended]

120. Section 442.12 *Cefoperazone sodium* is amended in paragraph (a)(3)(ii) by removing "Center for Drugs and Biologics" and replacing it with "Center for Drug Evaluation and Research".

§ 442.12a [Amended]

121. Section 442.12a *Sterile cefoperazone sodium* is amended in the introductory text of paragraph (a)(3)(ii) by removing "National Center for Drugs and Biologics" and replacing it with "Center for Drug Evaluation and Research".

§ 442.13 [Amended]

122. Section 442.13 *Cefotaxime sodium* is amended in paragraph (a)(3)(ii) by removing "Center for Drugs and Biologics" and replacing it with "Center for Drug Evaluation and Research".

§ 442.14 [Amended]

123. Section 442.14 *Cefoxitin sodium* is amended in paragraph (a)(3)(ii) by removing "Center for Drugs and Biologics" and replacing it with "Center for Drug Evaluation and Research".

§ 442.16a [Amended]

124. Section 442.16a *Sterile ceftazidime pentahydrate* is amended in the introductory text of paragraph (a)(3)(ii) by removing "Center for Drugs and Biologics" and replacing it with "Center for Drug Evaluation and Research".

§ 442.17 [Amended]

125. Section 442.17 *Ceftizoxime sodium* is amended in paragraph (a)(3)(ii) by removing "Center for Drugs and Biologics" and replacing it with "Center for Drug Evaluation and Research".

§ 442.17a [Amended]

126. Section 442.17a *Sterile ceftizoxime sodium* is amended in the introductory text of paragraph (a)(3)(ii) by removing "National Center for Drugs and Biologics" and replacing it with "Center for Drug Evaluation and Research".

§ 442.18a [Amended]

127. Section 442.18a *Sterile cefuroxime sodium* is amended in the introductory text of paragraph (a)(3)(ii) by removing "National Center for Drugs and Biologics" and replacing it with "Center for Drug Evaluation and Research".

§ 442.19 [Amended]

128. Section 442.19 *Cefuroxime axetil* is amended in paragraph (a)(3)(ii) by removing "Center for Drugs and Biologics" and replacing it with "Center for Drug Evaluation and Research".

§ 442.20a [Amended]

129. Section 442.20a *Sterile cefonicid sodium* is amended in the introductory text of paragraph (a)(3)(ii) by removing "Center for Drugs and Biologics" and replacing it with "Center for Drug Evaluation and Research".

§ 442.50a [Amended]

130. Section 442.50a *Sterile ceforanide* is amended in the introductory text of paragraph (a)(3)(ii) by removing "Center for Drugs and Biologics" and replacing it with "Center for Drug Evaluation and Research".

§ 442.53a [Amended]

131. Section 442.53a *Sterile cefortetan disodium* is amended in the introductory text of paragraph (a)(3)(ii) by removing "Center for Drugs and Biologics" and replacing it with "Center for Drug Evaluation and Research".

§ 442.55 [Amended]

132. Section 442.55 *Ceftriaxone sodium* is amended in the paragraph (a)(3)(ii) by removing "Center for Drugs and Biologics" and replacing it with "Center for Drug Evaluation and Research".

§ 442.55a [Amended]

133. Section 442.55a *Sterile ceftriaxone sodium* is amended in the introductory text of paragraph (a)(3)(ii) by removing "Center for Drugs and Biologics" and replacing it with "Center for Drug Evaluation and Research".

§ 442.119 [Amended]

134. Section 442.119 *Cefuroxime axetil tablets* is amended in the introductory text of paragraph (a)(3)(ii) by removing "Center for Drugs and Biologics" and replacing it with "Center for Drug Evaluation and Research".

§ 442.211b [Amended]

135. Section 442.211b *Cefazolin sodium injection* is amended in the introductory text of paragraph (a)(3)(ii) by removing "National Center for Drugs and Biologics" and replacing it with "Center for Drug Evaluation and Research".

§ 442.212b [Amended]

136. Section 442.212b *Cefoperazone sodium injection* is amended in the introductory text of paragraph (a)(3)(ii) by removing "Center for Drugs and Biologics" and replacing it with "Center for Drug Evaluation and Research".

§ 442.213b [Amended]

137. Section 442.213b *Cefotaxime sodium injection* is amended in the introductory text of paragraph (a)(3)(ii) by removing "Center for Drugs and Biologics" and replacing it with "Center for Drug Evaluation and Research".

§ 442.214b [Amended]

138. Section 442.214b *Cefoxitin sodium injection* is amended in the introductory text of paragraph (a)(3)(ii) by removing "Center for Drugs and Biologics" and replacing it with "Center for Drug Evaluation and Research".

§ 442.216a [Amended]

139. Section 442.216a *Ceftazidime pentahydrate for injection* is amended in the introductory text of paragraph (a)(3)(ii) by removing "Center for Drugs and Biologics" and replacing it with "Center for Drug Evaluation and Research".

§ 442.217b [Amended]

140. Section 442.217b *Ceftizoxime sodium injection* is amended in the introductory text of paragraph (a)(3)(ii) by removing "Center for Drugs and Biologics" and replacing it with "Center for Drug Evaluation and Research".

§ 442.223 [Amended]

141. Section 442.223 *Sterile cephaloridine* is amended by removing "§ 424.23a" and replacing it with "§ 442.23a".

§ 442.250 [Amended]

142. Section 442.250 *Ceforanide for injection* is amended in the introductory text of paragraph (a)(3)(ii) by removing "Center for Drugs and Biologics" and replacing it with "Center for Drug Evaluation and Research".

§ 442.255b [Amended]

143. Section 442.255b *Ceftriaxone sodium injection* is amended in the introductory text of paragraph (a)(3)(ii) by removing "Center for Drugs and

Biologics" and replacing it with "Center for Drug Evaluation and Research".

PART 444—OLIGOSACCHARIDE ANTIBIOTIC DRUGS

144. The authority citation for 21 CFR part 444 continues to read as follows:

Authority: Sec. 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357).

§ 444.46 [Amended]

145. Section 444.46 *Netilmicin sulfate* is amended in paragraph (a)(3)(ii) by removing "National Center for Drugs and Biologics" and replacing it with "Center for Drug Evaluation and Research".

§ 444.246 [Amended]

146. Section 444.246 *Netilmicin sulfate injection* is amended in the introductory text of paragraph (a)(3)(ii) by removing "National Center for Drugs and Biologics" and replacing it with "Center for Drug Evaluation and Research".

§ 444.542k [Amended]

147. Section 444.542k *Neomycin sulfate-polymyxin B sulfate-hydrocortisone acetate cream* is amended in the introductory text of paragraph (a)(3)(ii) by removing "Center for Drugs and Biologics" and replacing it with "Center for Drug Evaluation and Research".

§ 444.542l [Amended]

148. Section 444.542l *Neomycin sulfate-polymyxin B sulfate cream* is amended in the introductory text of paragraph (a)(3)(ii) by removing "Center for Drugs and Biologics" and replacing it with "Center for Drug Evaluation and Research".

PART 446—TETRACYCLINE ANTIBIOTIC DRUGS

149. The authority citation for 21 CFR part 446 continues to read as follows:

Authority: Sec. 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357).

§ 446.120d [Amended]

150. Section 446.120d *Doxycycline hyclate pellet-filled capsules* is amended in the introductory text of paragraph (a)(3)(ii) by removing "Center for Drugs and Biologics" and replacing it with "Center for Drug Evaluation and Research".

PART 448—PEPTIDE ANTIBIOTIC DRUGS

151. The authority citation for 21 CFR part 448 continues to read as follows:

Authority: Sec. 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357).

§ 448.23 [Amended]

152. Section 448.23 *Cyclosporine* is amended in paragraph (a)(3)(ii) by removing "Center for Drugs and Biologics"and replacing it with "Center for Drug Evaluation and Research".

§ 448.123 [Amended]

153. Section 448.123 *Cyclosporine oral solution* is amended in the introductory text of paragraph (a)(3)(ii) by removing "Center for Drugs and Biologics" and replacing it with "Center for Drug Evaluation and Research".

§ 448.223 [Amended]

154. Section 448.223 *Cyclosporine for infusion* is amended in the introductory text of paragraph (a)(3)(ii) by removing "Center for Drugs and Biologics" and replacing it with "Center for Drug Evaluation and Research".

§ 448.510f [Amended]

155. Section 448.510f *Bacitracin-polymyxin B sulfate topical aerosol* is amended in the introductory text of paragraph (a)(3)(ii) by removing "Center for Drugs and Biologics" and replacing it with "Center for Drug Evaluation and Research".

§ 448.513d [Amended]

156. Section 448.513d *Bacitracin zinc-polymyxin B sulfate topical powder* is amended in the introductory text of paragraph (a)(3)(ii) by removing "Center for Drugs and Biologics" and replacing it with "Center for Drug Evaluation and Research".

§ 448.513e [Amended]

157. Section 448.513e *Bacitracin zinc-polymyxin B sulfate topical aerosol* is amended in the introductory text of paragraph (a)(3)(ii) by removing "Center for Drugs and Biologics" and replacing it with "Center for Drug Evaluation and Research".

PART 449—ANTIFUNGAL ANTIBIOTIC DRUGS

158. The authority citation for 21 CFR part 449 continues to read as follows:

Authority: Sec. 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357).

§ 449.150d [Amended]

159. Section 449.159d *Nystatin pastilles* is amended in the introductory text of paragraph (a)(3)(ii) by removing "Center for Drugs and Biologics" and replacing it with "Center for Drug Evaluation and Research".

PART 452—MACROLIDE ANTIBIOTIC DRUGS

160. The authority citation for 21 CFR part 452 continues to read as follows:

Authority: Sec. 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357).

§ 452.32a [Amended]

161. Section 452.32a *Sterile erythromycin lactobionate* is amended in the introductory text of paragraph (a)(3)(ii) by removing "Center for Drugs and Biologics" and replacing it with "Center for Drug Evaluation and Research".

§ 452.110d [Amended]

162. Section 452.110d *Erythromycin particles in tablets* is amended in the introductory text of paragraph (a)(3)(ii) by removing "Center for Drugs and Biologics" and replacing it with "Center for Drug Evaluation and Research".

§ 452.510d [Amended]

163. Section 452.510d *Erythromycin-benzoyl peroxide topical gel* is amended in the introductory text of paragraph (a)(3)(ii) by removing "Center for Drugs and Biologics" and replacing it with "Center for Drug Evaluation and Research".

§ 452.910 [Amended]

164. Section 452.910 *Erythromycin for prescription compounding* is amended in paragraph (a)(3)(ii) by removing "Center for Drugs and Biologics" and replacing it with "Center for Drug Evaluation and Research".

PART 455—CERTAIN OTHER ANTIBIOTIC DRUGS

165. The authority citation for 21 CFR part 455 continues to read as follows:

Authority: Sec. 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357).

§ 455.4a [Amended]

166. Section 455.4a *Sterile aztreonam* is amended in the introductory text of paragraph (a)(3)(ii) by removing "Center for Drugs and Biologics" and replacing it with "Center for Drug Evaluation and Research".

§ 455.15 [Amended]

167. Section 455.15 *Clavulanate potassium* is amended in paragraph (a)(3)(ii) by removing "Center for Drugs and Biologics" and replacing it with "Center for Drug Evaluation and Research".

§ 455.15a [Amended]

168. Section 455.15a *Sterile clavulanate potassium* is amended in paragraph (a)(3)(ii) by removing "Center for Drugs and Biologics" and replacing it with "Center for Drug Evaluation and Research".

§ 455.82a [Amended]

169. Section 455.82a *Sterile sulbactam sodium* is amended in paragraph (a)(3)(ii) by removing "Center for Drugs and Biologics" and replacing it with "Center for Drug Evaluation and Research".

§ 455.185b [Amended]

170. Section 455.185b *Vancomycin hydrochloride capsules* is amended in the introductory text of paragraph (a)(3)(ii) by removing "Center for Drugs and Biologics" and replacing it with "Center for Drug Evaluation and Research".

§ 455.204a [Amended]

171. Section 455.204a *Aztreonam for injection* is amended in the introductory text of paragraph (a)(3)(ii) by removing "Center for Drugs and Biologics" and replacing it with "Center for Drug Evaluation and Research".

§ 455.510d [Amended]

172. Section 455.510d *Fibrinolysin and desoxyribonuclease, combined (bovine) with chloramphenicol ointment* is amended in paragraph (a)(1) by removing "Bureau of Biologics" and replacing it with "Center for Biologics Evaluation and Research".

Dated: March 5, 1990.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 90-6284 Filed 3-28-90; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 0

[Order No. 1403-90]

Federal Bureau of Investigation (FBI); Designation as Lead Agency to Combat Terrorism

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice is amending its regulations to clarify and specifically define the investigative role of the FBI relative to domestic and international terrorism within the statutory jurisdiction of the United States. These changes by the FBI impact only on statutes for which the FBI has primary or concurrent investigative responsibilities.

EFFECTIVE DATE: March 12, 1990.

FOR FURTHER INFORMATION CONTACT: D. F. Martell, Supervisory Special Agent, Counterterrorism Section, FBI Headquarters, (202) 324-2087. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The regulation is being expanded to clarify and specifically define the investigative role of the FBI relative to domestic and international terrorism within the statutory jurisdiction of the United States. This change will permit the FBI to demonstrate clearly that it is the lead agency in this area and that it acts in this role with the full authority of the Attorney General.

This regulation is not a major rule within the meaning of Executive Order 12291, because it imposes no new requirements. Therefore, a regulatory impact analysis has not been prepared.

This regulation does not have an impact on smal entities and, therefore, is not subject to the Regulatory Flexibility Act (5 United States Code (U.S.C.) 601-612).

List of Subjects in 28 CFR Part 0

Authority delegations (Government Agencies), Crimes, Law enforcement.

By the authority invested in me including 28 U.S.C. 509, and 5 U.S.C. 301, subpart P of part 0 of title 28 of the Code of Federal Regulations is amended as follows:

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

1. The authority citation for part 0 continues to read as follows:

Authority: 5 U.S.C. 301, 2303, 3103; 8 U.S.C. 1103, 1324A, 1427(g); 15 U.S.C. 644(k); 18 U.S.C. 2254, 3621, 3622, 4001, 4041, 4042, 4044, 4082, 4201 *et seq.*, 6003(b); 21 U.S.C. 871, 881(d), 904; 22 U.S.C. 263a, 1621-1645o, 1622 note; 28 U.S.C. 509, 510, 515, 516, 519, 524, 543, 552, 552a, 569; 31 U.S.C. 1108, 3801 *et seq.*; 50 U.S.C. App. 1989b, 2001-2017p; Pub. L. No. 91-513, sec. 501; EO 11919; EO 11267; EO 11300.

2. Section 0.85 is amended by adding a new paragrah (l) to read as follows:

§ 0.85 General functions.

* * * * *

(l) Exercise Lead Agency responsibility in investigating all crimes for which it has primary or concurrent jurisdiction and which involve terrorist activities or acts in preparation of terrorist activities within the statutory jurisdiction of the United States. Within the United States, this would include the collection, coordination, analysis, management and dissemination of intelligence and criminal information as appropriate. If another Federal agency identifies an individual who is engaged in terrorist activities or in acts in preparation of terrorist activities, that agency is requested to promptly notify the FBI. Terrorism includes the unlawful use of force and violence against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof, in furtherance of political or social objectives.

Dated: March 12, 1990.

Dick Thornburg,

Attorney General.

[FR Doc. 90-6970 Filed 3-28-90; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05-90-011]

Special Local Regulations for Marine Events; British and Irish Festival; Norfolk Harbor, Elizabeth River, Norfolk and Portsmouth, VA

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation of 33 CFR 100.501.

SUMMARY: This notice implements 33 CFR 100.501 for the British and Irish Festival. The event will consist of a sculling competition involving various amateur competitors. Competition will be held on the Elizabeth River parallel to Town Point Park/Otter Berth Areas of Waterside, Norfolk Harbor, Norfolk and Portsmouth, Virginia. The regulations in 33 CFR 100.501 are needed to control vessel traffic within the immediate vicinity of the event due to the confined nature of the waterway and the expected congestion at the time of the event. The regulations restrict general navigation in the area for the safety of life and property on the navigable waters during the event.

EFFECTIVE DATE: The regulations in 33 CFR 100.501 are effective from 11 a.m. to 5 p.m., on April 28, 1990.

FOR FURTHER INFORMATION CONTACT: Stephen L. Phillips, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004 (804) 398-6204.

Drafting Information: The drafters of this notice are QM1 Kevin R. Connors, project officer, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and Lieutenant Steven M. Fitten, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulation: Norfolk Festevents, Ltd. submitted an application on January 19, 1990 to hold a sculling competition involving various

amateur competitors during the British and Irish Festival. The competition will be held on the Elizabeth River parallel to the Town Point Park and Otter Berth Areas of Waterside, Norfolk Harbor, Norfolk and Portsmouth, Virginia, on April 28, 1990. The Coast Guard Patrol Commander may stop the event to assist the transit of marine traffic through the regulated area. Since the channel will not be closed for extended periods of time, commercial traffic should not be severely disrupted. Because this is the type of event contemplated by these regulations, and the safety of participants would be enahnced by the implementation of the special local regulations for this regulated area, the regulations prescribed by 33 CFR 100.501 are being implemented.

Dated: March 21, 1990.

P.A. Welling,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 90-7144 Filed 3-28-90; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 100

[CGD 05-90-013]

Special Local Regulations for Marine Events; The Governor's Cup/New Bern; Neuse River, Trent River, New Bern, North Carolina

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the Governor's Cup/New Bern Sailing Race to be held on April 4, 1990 thru April 8, 1990 on the Neuse River and Trent River at New Bern, North Carolina. The event consists of 17 high speed catamarans capable of speed in excess of 30 knots racing on a closed course on the Neuse River and the Trent River off of Union Point Park at New Bern, North Carolina. These regulations are necessary to control spectator craft and provide for the safety of life and property on navigable waters during the event.

EFFECTIVE DATES: These regulations are effective for the following periods:

10 a.m. to 6 p.m. April 4, 1990.
10 a.m. to 6 p.m. April 5, 1990.
10 a.m. to 6 p.m. April 6, 1990.
10 a.m. to 6 p.m. April 7, 1990.
10 a.m. to 6 p.m. April 8, 1990.

FOR FURTHER INFORMATION CONTACT: Stephen L. Phillips, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004 (804) 398-6204.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Adherence to normal rulemaking procedures would not have been possible. Specifically, the sponsor's application to hold the event was not received in the district office until March 15, 1990, leaving insufficient time to publish a notice of proposed rulemaking in advance of the event.

Drafting Information

The drafters of this notice are QM1 Kevin R. Connors, project officer, Boating Affairs Branch, Fifth Coast Guard District, and Lieutenant Steven M. Fitten, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulations

ProSail of Charlotte, North Carolina submitted an application dated March 10, 1990 to hold the Governor's Cup/New Bern on April 4, 1990 thru April 8, 1990 on the Neuse River and Trent River at New Bern, North Carolina. The event consists of 17 high speed catamarans capable of speed in excess of 30 knots racing on a closed course on the Neuse River and the Trent River off of Union Point Park at New Bern, North Carolina. These regulations are necessary to control spectator craft and provide for the safety of life and property on navigable waters during the event. Backed up marine traffic will be allowed to transit the area between race heats. Since the main shipping channel will not be closed for extended periods of time, commercial traffic should not be severely disrupted.

Economic Assessment and Certification

These regulations are not considered either major under Executive Order 12291 on Federal Regulation or significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact is expected to be so minimal that a full regulatory evaluation is unnecessary and the Coast Guard certifies that these regulations will not have a significant economic impact on a substantial number of small entities.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 and determined the final rule does not raise sufficient implications to warrant the preparation of a Federalism Assessment.

Environmental Impact

This final rule has been thoroughly reviewed by the Coast Guard and determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.c of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and placed in permanent regulations 33 CFR 100.515 rulemaking docket.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water).

Final Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations is amended as follows:

PART 100—[AMENDED.]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35-0513 is added to read as follows:

§ 100.35-0513 Neuse River, Trent River, New Bern, North Carolina.

(a) *Definitions*—(1) *Regulated area.* The waters of the Neuse River and the Trent River bounded by a line beginning at 35°05'35.0" North, longitude 77°02'05.5" West, thence northeast to latitude 35°05'36.3" North, longitude 77°01'44.0" West, thence northwest to latitude 35°06'33.0" North, longitude 77°01'58.5" West, following the bridge southwest to latitude 35°06'30.0" North, longitude 77°02'06.0" West, thence following the shoreline south and west to latitude 35°06'12.5" North, longitude 77°02'33.0" West, thence south along the bridge to latitude 35°05'57.0" North, longitude 77°02'30.0" West, thence along the shoreline east and south back to the point of beginning.

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer who has been designated by the Commander, Coast Guard Group Fort Macon.

(b) *Special Local Regulations.* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the immediate vicinity of this area shall:

(i) Stop the vessel immediately when directed to do so by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer

on board a vessel displaying a Coast Guard ensign.

(3) Any spectator vessel may anchor outside of the regulated area specified in paragraph (a)(1) of these regulations, but may not block a navigable channel.

(c) *Effective Dates:* These regulations are effective for the following periods:

10 a.m. to 6 p.m. April 4, 1990.
10 a.m. to 6 p.m. April 5, 1990.
10 a.m. to 6 p.m. April 6, 1990.
10 a.m. to 6 p.m. April 7, 1990.
10 a.m. to 6 p.m. April 8, 1990.

Dated: March 22, 1990.

P.A. Welling,

Rear Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 90-7145 Filed 3-28-90; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 117

[7-89-48]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, Florida

AGENCY: Coast Guard, DOT.

ACTION: Final rule; revocation.

SUMMARY: This amendment revokes the regulations for the Port Orange drawbridge, mile 835.5 at Port Orange because the bridge has been replaced with a high level fixed bridge. Notice and public procedure have been omitted from this action because the drawbridge has been removed.

EFFECTIVE DATE: This rule becomes effective on April 30, 1990.

FOR FURTHER INFORMATION CONTACT: Walt Paskowsky (305) 536-4103.

Drafting information

The drafters of this rule are Mr. Walt Paskowsky, Bridge Administration Specialist, project officer, and Lieutenant Commander D.G. Dickman, project attorney.

SUPPLEMENTARY INFORMATION:

This action has no economic consequences. It merely revokes regulations that are now meaningless because they pertain to a drawbridge that has been removed. Consequently, this action is considered to be non-major under Executive Order 12291 and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979). Since there is no economic impact, a full regulatory evaluation is unnecessary. Because no notice of proposed rulemaking is required under 5 U.S.C. 553, and because this action will not have a significant impact on a substantial number of small entities, this rulemaking is exempt from provisions of the Regulatory Flexibility Act under 5 U.S.C. 605(b).

List of Subjects in 33 CFR Part 117

Bridges.

In consideration of the foregoing, part 117 of title 33, Code of Federal Regulations is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 USC 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

§ 117.261 [Amended]

2. Section 117.261(g) is removed.

Dated: March 14, 1990.

Martin H. Daniell,

Rear Admiral, U.S. Coast Guard Commander, Seventh Coast Guard District.

[FR Doc. 90-7146 Filed 3-28-90; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 74

Broadcast Auxiliary Service Antenna Requirements for Microwave Operation

AGENCY: Federal Communications Commission.

ACTION: Final rule; Technical amendment.

SUMMARY: These technical amendments are being made to correct an error that has been identified by the Agency in the Code of Federal Regulations.

EFFECTIVE DATE: March 29, 1990.

FOR FURTHER INFORMATION CONTACT: Hank VanDeursen, Mass Media Bureau, (202) 632-9660.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 74

Television broadcasting.

Part 74 of title 47 of the Code of Federal Regulations is amended as follows:

PART 74—[AMENDED]

1. The authority citation for part 74 continues to read as follows:

Authority: 47 U.S.C. sections 154 and 303.

2. Section 74.641 is corrected by revising the introductory text of paragraph (b) to read as follows:

§ 74.641 Antenna systems.

* * * * *

(b) Any fixed station licensed pursuant to applications for filing prior to October 1, 1981, may continue to use existing antenna systems, subject to periodic renewal until October 1, 1991. After October 1, 1991, all licensees are to use antenna systems in conformance with the standards of this section. TV auxiliary broadcast stations not located in areas subject to frequency congestion are to employ a category A antenna when:

* * * * *

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90-7123 Filed 3-28-90; 8:45 am]

BILLING CODE 6712-01-M

GENERAL SERVICES ADMINISTRATION

48 CFR Part 570

[APD 2800.12A CHGE 6]

Revision of Appraisal Requirements Related to Acquisitions of Leasehold Interests in Real Property

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR), chapter 5 (APD 2800.12A), is amended by amending section 570.208-2 to make an editorial change in paragraph (a) and to correct the GSAR citation in paragraph (e); to revise section 570.208-3 to set forth thresholds, exceptions and procedures concerning appraisal requirements related to acquisitions of leasehold interests in real property; to revise section 570.208-5(b) to update the title of the Credit and Finance section; and to revise section 570.501(d) to provide for reappraisals. Acquisition Circular AC-89-4 is canceled upon the effective date of this rule.

EFFECTIVE DATE: April 13, 1990.

FOR FURTHER INFORMATION CONTACT: John Joyner, Office of GSA Acquisition Policy (202) 566-1224.

SUPPLEMENTARY INFORMATION:

A. Public Comments

GSA stated in Acquisition Circular AC–89–4, published at (54 FR 49090), which temporarily amended the GSAR, that the rule was not published for public comment because it relates to internal operating procedures of the agency and has no impact on prospective lessors.

B. Background

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this rule. This rule amends the GSAR to provide internal operating procedures. The Regulatory Flexibility Act does not apply to this rule because the proposed policy was not required to be published in the **Federal Register**. The rule does not contain information collection requirements that require the approval of OMB under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

List of Subjects in 48 CFR Part 570

Government procurement, real property acquisition.

PART 570—[AMENDED]

1. The authority citation for 48 CFR part 570 continues to read as follows:

Authority: 40 U.S.C. 486(c).

2. Section 570.208–2 is amended by revising paragraphs (a) and (e) to read as follows:

570.208–2 Cost of pricing data.

(a) Cost or pricing data are required under the circumstances described in FAR 15.804–2.

* * * * *

(e) If the proposed lessor refuses to provide the data when required, the contracting officer shall follow the procedures in FAR 15.804–6(e) and 515.804–6.

3. Section 570.208–3 is revised to read as follows:

570.208–3 Appraisal.

(a) Except as provided in paragraphs (b) and (c) of this section, the contracting officer shall obtain an appraisal of the fair rental value for acquisitions of leasehold interests in real property.

(b) An appraisal of the fair rental value is not required for:

(1) A lease of 2,000 or less net usable square feet if the gross annual rent does not exceed $50,000 and the aggregate rent during the term, including options, does not exceed $1 million; or

(2) A lease of 2,001 to 10,000 net usable square feet if the gross annual rent does not exceed $50,000 and the aggregate rent during the term, including options, does not exceed $2 million; or

(3) A lease of 2,001 to 10,000 net usable square feet if (i) the gross annual rent exceeds $50,000; (ii) the aggregate rent during the term, including options, does not exceed $2 million; and (iii) three or more offers are received that are responsive to the Government's requirements as outlined in the solicitation.

(4) A lease entered into pursuant to FAR 6.302–2 under situations of unusual and compelling urgency.

(c) Notwithstanding the exceptions in paragraph (b) of this section, the contracting officer shall obtain an appraisal when:

(1) The Government's requirement for space generates or requires new construction or an addition to an existing building;

(2) The space is to be leased for a special purpose facility (e.g., border stations, laboratories, motor pools, etc.);

(3) A sole source leasing action (including extensions or expansions) that will exceed $100,000 in aggregate rent is involved; or

(4) Market information is not adequate to make a determination that the proposed rental rate is fair and reasonable.

4. Section 570.208–5(b) is revised to read as follows:

570.208–5 Financial responsibility.

* * * * *

(b) In cases where the contracting officer has reason to question the offeror's financial ability to perform, a financial responsibility check may be requested from the Accounts Receivable Branch, Credit and Finance Section, Region 6.

* * * * *

5. Section 570.501(d) is revised to read as follows:

570.501 Renewal options.

* * * * *

(d) *Reappraisal.* The original appraisal must be updated by memorandum or a new appraisal performed unless one of the exceptions to the appraisal requirement outlined at 570.208–3 applies.

* * * * *

Dated: March 19, 1990.

Richard H. Hopf, III,

Associate Administrator for Acquisition Policy.

[FR Doc. 90–7169 Filed 3–28–90; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 81273–0064]

RIN 0648–AD08

Taking and Importing of Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Interim final rule.

SUMMARY: The National Marine Fisheries Service (NMFS) issues this interim final rule to prohibit the use of all explosive devices in tuna purse seine fishing involving marine mammals. This rule implements certain measures contained in the Marine Mammal Protection Act Amendments of 1988 which were signed into law on November 23, 1988.

EFFECTIVE DATE: April 1, 1990. Comments are invited and must be received on or before April 27, 1990.

ADDRESSES: Comments may be mailed to E. Charles Fullerton, Regional Director, Southwest Region, National Marine Fisheries Service, NOAA, 300 South Ferry Street, Terminal Island, CA 90731. Copies of the Environmental Assessment and seal bomb workshop report are available upon request.

FOR FURTHER INFORMATION CONTACT: E. Charles Fullerton, Regional Director, Southwest Region, NMFS, at (213) 514–6196.

SUPPLEMENTARY INFORMATION: Purse seine fishing for yellowfin tuna in the eastern tropical Pacific Ocean (ETP) is conducted mainly in association with dolphins. Schools of large yellowfin tuna tend to swim beneath schools of dolphins. During the fishing operation, dolphins are searched for, herded by speedboats, surrounded by the seine, and, through a process called backdown, released over the net while tuna remain captured. Dolphins may become entangled in the net and drown before they are released. This type of fishing operation is prohibited by the Marine Mammal Protection Act (16 U.S.C. 1361 *et seq.*; the MMPA) except when conducted under the general permit issued to the American Tunaboat Association and in compliance with the applicable regulations.

Commercial fishermen along the Pacific coast of the United States have been permitted to use Class C explosive pest control devices under regulations governing their incidental take of marine mammals in fishing operations. The devices commonly used are known as

seal control devices or seal bombs and are for the purpose of driving off marine mammals, usually pinnipeds, that threaten the catch or fishing gear.

Fishermen in the ETP, when in pursuit of yellowfin tuna in association with dolphins, use noise and turbulence generated by speedboats, helicopters, the net skiff and the main vessel to control and herd dolphins. Beginning about 1981 seal bombs were used by fishermen as a tool to further strengthen their influence on dolphin behavior. Seal bombs had been used previously by some operators to prevent tuna from escaping the net in sets not involving dolphins.

Examination of 1989 observer data indicates that seal bombs have become widely used in the chase, encirclement and release phases of the fishing operation. Current data show that in 38 percent of the sets on marine mammals, seal bombs were used at least once at some point in setting the net. There are no data on the numbers of seal bombs used per set, but interviews with returning scientific observers indicated an average of 200 is realistic. About 35 percent of purse seine vessel operators do not use seal bombs at all, and 15 percent only use them occasionally. In the seal bomb workshop, held at the NMFS Southwest Fisheries Center in La Jolla, California, on November 27–29, 1989, industry representatives reported that analysis of 2,600 sets revealed greatest seal bomb use in the backdown (dolphin release procedure) phase of the purse seining operation. The SWC analysis shows that use occurs 50 percent of the time when dolphins are herded during the chases, and 30 to 40 percent of the time during backdowns. The disparity between industry and SWC results is due to differences in data bases. It is possible that much of the seal bomb use in the chase goes unrecorded because it occurs miles from the vessel and away from the observer.

The significance of the use of seal bombs during backdown is that it may contribute in a positive way to the safe release of dolphins. Seal bombs can be and are used to herd encircled dolphins away from dangerous areas of the seine and to facilitate their release during backdown.

In 1988, the U.S. Congress through Public Law 100–711, reauthorized the MMPA and amended it to prohibit the use of explosive devices in tuna purse seine operations that involve marine mammals, with one exception. The exception from this prohibition was that Class C explosive pest control devices, approved by the U.S. Department of Transportation, could continue to be used when marine mammals are present. An interim final rule in this regard was published in the **Federal Register** (54 FR 411) and became effective on January 1, 1989. Continued unrestricted use of the Class C explosive pest control devices was made contingent upon the outcome of a study mandated by Congress and undertaken by the Secretary of Commerce. Amendments to the MMPA require that the Secretary prescribe regulations to prohibit or restrict the use of Class C explosive pest control devices by April 1, 1990, unless the Secretary, based upon the study, determines "* * * that the use of such devices does not result in physical impairment or increased mortality of marine mammals."

Such a study was conducted by the NMFS' Southwest Fisheries Center and the results were reviewed by experts in a workshop held in La Jolla, California, on November 27–29, 1989. The workshop participants determined that physical injuries to dolphins were caused by Class C explosive pest control devices known as seal bombs detonated within 0.5 meter of the animal. The data do not exist to estimate at what sound level there would be damage to dolphin hearing, but the panel was concerned about the long-term or chronic effects of seal bomb use on dolphins in the tuna purse seine fishery, and noted that hearing ability in ETP dolphins is likely to be critical to their survivability. There were no data available to the SWC to support the hypothesis that seal bombs contribute to reduced dolphin mortality. Workshop panel members agreed that data also do not exist to determine whether the use of seal bombs could or do contribute to a reduction or increase in total dolphin mortality. In the sets examined for 1989, there is no statistical significance in the dolphin kill-per-set mortality rates between sets with and without seal bomb use. Copies of the report of that workshop are available on request (see address).

Therefore because NMFS cannot show, as the MMPA mandates, that Class C seal bombs do not result in physical impairment or increased mortality of dolphins, and because these devices have the potential to cause injuries and compromise the future survivability of the marine mammals affected, NMFS proposes to implement an interim final rule prohibiting the use of all explosive devices in tuna purse seine operations that involve marine mammals. This action is based on the outcome of the study conducted by the Secretary of Commerce, and mandated by the MMPA Amendments of 1988 (Pub. L. 100–711).

Classification

This rule is being published as an interim final rule without opportunity for prior public comment and without delayed effectiveness period in order to meet a schedule required in the statute. The MMPA amendments of 1988, signed into law on November 23, 1988, require that the use of Class C explosive pest control devices be restricted or prohibited by April 1, 1990. The fishing vessel owners, whose operations will be affected by this rule, have been aware of the research into effects of explosives on dolphins and were represented in a workshop to review the results of that research. The NMFS gave notice in a previous rule published on January 6, 1989, (54 FR 411) that additional restrictions or a prohibition on the use of explosives would likely occur by April 1, 1990. Public commet is solicited while the rule is in effect, and comments received will be considered in preparing a final rule.

The Assistant Administrator for Fisheries has determined, based on an Environmental Assessment (EA) prepared by NMFS, that the modifications to the regulations being made at 50 CFR 216.24(d)(2)(vii)(E) will not have a significant impact on the environment. As a result of this determination, an environmental impact statement will not be prepared. The EA is available upon request (see address).

The Administrator of NOAA has determined that this rule is not a major rule requiring a regulatory impact analysis under Executive Order 12291. The NMFS prepared a regulatory impact review as part of its EA which concluded that this rule will not result in (1) An annual major increase in costs or prices for consumers, individual industries or government agencies; (2) an annual effect on the economy of $100 million or more; or (3) significant adverse effect on competition, employment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises in domestic or import markets.

The Regulatory Flexibility Act does not apply since the opportunity for public comment prior to publication of the interim final rule is not required by the Marine mammal Protection Act or any other act. As a result, a Regulatory Flexibility Analysis was not prepared.

This rule does not contain collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism

assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 216

Administrative practice and procedure, Imports, Marine mammals, Penalties, Reporting and recordkeeping requirements, Transportation.

Dated: March 26, 1990.

William W. Fox, Jr.,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 216 is amended as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

1. The authority for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

§ 216.24 [Amended]

2. In § 216.24, paragraph (d)(2)(vii)(E) is revised to read as follows:

(d) * * *

(2) * * *

(vii) * * *

(E) Use of explosive devices: The use of explosive devices is prohibited in all tuna purse seine operations that involve marine mammals.

* * * * *

[FR Doc. 90-7188 Filed 3-28-90; 8:45 am]

BILLING CODE 3510-22-M

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50 CFR Part 301

[Docket No. 91295-0055]

Pacific Halibut Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of approval of a Pacific halibut catch sharing plan.

SUMMARY: NOAA announces approval by the Secretary of Commerce (Secretary) of a Catch Sharing Plan developed and adopted by the Pacific Fishery Management Council (Council) to allocate the catch of Pacific halibut in 1990 between treaty Indian and non-Indian commercial and recreational fishermen in International Pacific Halibut Commission (IPHC) statistical Area 2A.

The approved 1990 Catch Sharing Plan (Plan) allocates the total allowable catch of Pacific halibut in Area 2A between domestic users in accordance with the Northern Pacific Halibut Act of 1982. The intended effect of the Plan is to ensure the conservation and management of Pacific halibut stocks by limiting the total harvest to a biologically acceptable level while equitably distributing the allowable harvest among affected user groups in Area 2A. The Plan is for 1990 only and will be implemented in subsequent federal regulations.

DATES: March 28, 1990.

ADDRESSES: Copies of the Plan are available from Rolland A. Schmitten, Regional Director, National Marine Fisheries Service, Northwest Region, 7600 Sand Point Way NE., BIN C15700, Bldg. 1, Seattle, WA, 98115, or Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, Suite 420, 2000 SW., First Ave., Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206-526-6140 or Lawrence D. Six at 503-221-6352.

SUPPLEMENTARY INFORMATION: The Northern Pacific Halibut Act, Public Law 97-176, 16 USC 773c(c), authorizes the Regional Fishery Management Council having authority for the geographic area concerned to develop regulations governing the allocation of Pacific halibut catch in U.S. Convention waters which are in addition to, but not in conflict with, the regulations of the IPHC. The geographic area herein involved is all U.S. marine waters lying south of the U.S./Canadian border including Puget Sound, known as IPHC statistical Area 2A. The Council's process for developing its proposed and final allocation plan (Catch Sharing Plan) in Area 2A involved state, federal and treaty Indian fishery managers, user group representatives and the general public.

The Council, at its November 15-17, 1989, public meeting in Portland, Oregon, adopted for public review and comment a range of options and alternatives for development of a 1990 Catch Sharing Plan to allocate the catch of Pacific halibut between treaty Indian, non-Indian commercial and non-Indian recreational fishermen in Area 2A. The Council distributed the proposed Plan to user groups on the West Coast and submitted it to the Secretary for review and publication in the **Federal Register** for public comment. The proposed options and alternatives for a 1990 Plan, a description of the need for the Plan, and a description of the Council's process for developing the proposed plan were published in the **Federal Register** with a request for public comments on January 16, 1990 (55 FR 1491). No written comments on the proposed Plan were received by the Secretary. However, the Council received eleven written comments on the proposed options and alternatives. These written comments were distributed to NOAA and to Council members for their review prior to the Council's final adoption of a 1990 Catch Sharing Plan.

During its January 10, 1990, telephone conference call meeting, the Council reviewed the proposed allocation options and alternatives and considered comments made by the public. The Council then adopted a final 1990 Catch Sharing Plan (described below) that allocates the Area 2A total allowable catch (TAC) as subquotas to each of the major user groups. The final Plan was then forwarded to the Secretary for review and approval.

1990 Catch Sharing Plan for Area 2A

The Council's 1990 Catch Sharing Plan is approved by the Secretary for 1990 only. The Plan allocates 25 percent of the Area 2A total allowable catch (TAC) to Washington treaty Indian tribes and 75 percent to non-Indian fishermen. The treaty Indian allocation includes both tribal commercial and ceremonial and subsistence (C&S) fisheries. The allocation among non-Indian fishermen is divided 50 percent to commercial users and 50 percent to recreational users. The recreational allocation is further divided 61 percent to Washington users and 39 percent to Oregon and California users. The Washington recreational allocation applies to the coastal and inland waters off Washington and includes the north coast of Oregon, north of Cape Falcon. The Oregon recreational allocation applies to waters off Oregon south of Cape Falcon and includes the California coast. This Plan would distribute the Council's recommended TAC of 520,000 pounds in Area 2A as sub-quotas between the user groups as follows:

	Pounds
Treaty Indian sub-quota	130,000
Non-Indian Commercial sub-quota	195,000
Non-Indian Washington Recreational sub-quota	118,950
Non-Indian Oregon Recreational sub-quota	76,050
Total	520,000

Specific regulations to implement the 1990 Catch Sharing Plan and tribal and state recommendations on seasons and bag limits to achieve, but not exceed the sub-quotas, will be developed and incorporated into subsequent federal regulations on Pacific halibut in all U.S. waters.

Classification

The approved 1990 Catch Sharing Plan is a general statement of agency policy which does not require notice and comment rulemaking under the Administrative Procedure Act at 5 U.S.C. 553(b)(A). Consequently, the Regulatory Flexibility Act does not apply.

Based on the findings of a regulatory impact review prepared for the proposed Plan to fulfill the requirements of E.O. 12291, the Under Secretary for Oceans and Atmosphere has concluded that actions taken under the Plan are not "major" and a Regulatory Impact Analysis is not required. An Environmental Assessment (EA) was prepared for the 1988 Catch Sharing Plan in accordance with the National Environmental Policy Act (NEPA) and the Assistant Administrator for Fisheries, NOAA, determined that any action taken under the Plan would not have any signficant adverse impact on the human environment. Because the environmental impacts of the 1990 Plan are no different than those evaluated in the EA for the 1988 Catch Sharing Plan, the Assistant Administrator for Fisheries, NOAA, has determined that this action is categorically excluded from NEPA requirements to prepare an EA in accordance with paragraph 5a(3) of the NOAA Directives Manual 02–10. Copies of the 1990 regulatory impact review and NEPA analysis and the 1988 EA are available from the addresses above.

The approved Plan does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612, nor does it contain any collection of information requirement subject to the Paperwork Reduction Act.

As required by section 307 of the Coastal Zone Management Act, the coastal states of Washington, Oregon, and California have been notified of the determination that this action is consistent to the maximum extent practicable with applicable state coastal zone management programs as required.

List of Subjects in 50 CFR Part 301

Fisheries, Treaties.

Authority: 5 U.S.T. 5; T.I.A.S. 2900; 16 U.S.C. 773–773k.

Dated: March 23, 1990.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90–7126 Filed 3–28–90; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 55, No. 61
Thursday, March 29, 1990

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 916 and 917

[Docket No. FV-90-119]

Nectarines and Fresh Pears, Plums and Peaches Grown in California; Proposed Amendment of Size, Maturity, Container and Container Marking Requirements and Proposed Change in Maturity Variance Procedures for the 1990 Season

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on changes to the size, maturity, container and container marking requirements and maturity variance procedures for fresh nectarines, plums and peaches grown in California. The proposal would change the coverage of size requirements by adding several new varieties of nectarines, plums, and peaches to variety-specific size requirements, changing the size requirement for the Black Diamond plum variety, and by deleting other varieties from the requirements. Deleted varieties would be subject to the minimum size requirements for non-listed varieties. The proposal would relax the minimum size requirement for the May Glo nectarine variety for a specified period of time. The proposed rule would add to container marking requirements a list of tray-pack sizes to be marked on containers of nectarines and peaches when packed in containers other than tray-packs. The proposal would also add to the regulations a list of four-basket-crate plum size designations, by variety, to be marked on containers when plums are not packed in four-basket-crates. The proposal would extend use of a 24-pound container size for plums through the 1990 marketing season. Additionally, the proposed rule would revise maturity requirements for certain nectarine and peach varieties, and add maturity requirements for new varieties of nectarines, plums and peaches. Finally, the proposal would authorize a minor procedural change to hasten the variance procedures for nectarines, plums and peaches. With the exception of the proposal to allow the 24-pound plum container, all proposals were unanimously approved by the Nectarine Administrative Committee and the Plum and Peach Commodity Committees. The proposals are designed to provide handlers with more marketing flexibility, more accurately define the size and maturity characteristics of the fruit, improve the maturity variance procedures and promote the marketing of each of the fruits.

DATES: Comments must be received by April 30, 1990.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments should be sent to: Docket Clerk, Marketing Order Administration Branch, USDA/AMS/F&V-Room 2525-South, PO Box 96456, Washington, DC 20090-6456. Three copies of all written material shall be submitted, and will be made available for public inspection in the office of the Docket Clerk during regular business hours. All comments should reference the date and page number of this issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: George Kelhart, Marketing Order Administration Branch, USDA/AMS/F&V/Room 2525-South, P.O. Box 96456, Washington, DC 20090-6456; telephone (202) 475-3919, or, Kurt Kimmel, Marketing Field Office, USDA/AMS, 2202 Monterey St., Suite 102-B, Fresno, California 93721; telephone (209) 487-5901.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposal on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action or essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

It is estimated that approximately 465 handlers are subject to regulation under the marketing orders for California nectarines, plums and peaches. Small agricultural service firms have been defined by the Small Business Administration (SBA) (13 CFR 121.2) as those having annual receipts of less than $3,500,000. Likewise, there are about 1,720 producers of these tree fruits in California. Small agricultural producers have been defined by the SBA as those having annual receipts of less than $500,000. The majority of these handlers and producers may be classified as small entities.

Inspected shipments of California nectarines, plums and peaches for the 1989 season totalled 17,511,800, 15,021,800 and 14,529,400 packages respectively. They were marketed primarily in the fresh market.

Because these regulations do not change substantially from season to season, they have been issued on a continuing basis subject to amendment, modification or suspension as may be recommended by the applicable committee and approved by the Secretary.

The Nectarine Administrative Committee, Plum Commodity Committee and the Peach Commodity Committee (hereinafter referred to as the nectarine committee, plum committee and peach committee) unanimously recommended, with one exception, amending size and maturity requirements, adding container marking requirements and making a minor change in maturity variance procedures. Extension of the use of the 24-pound plum pack was not approved by a plum committee vote of 11 to 1. However, after evaluating all available information regarding this issue, the U.S. Department of Agriculture (Department) has decided that it is appropriate to invite comments from all interested persons regarding continued use of the 24-pound plum container.

This proposed rule is based upon all three committees' recommendations, on information submitted by these committees, their respective

subcommittees and on other available information. The proposed changes reflect crop and market conditions experienced in 1989 and expected in 1990. All comments timely received will be considered by the Department when making further decisions on these proposals.

Size Requirements

This proposal would alter size requirements for nectarines, plums and peaches by adding several new varieties now produced in commercially significant quantities to variety-specific (named variety) size requirements, and by deleting from variety-specific size requirements certain varieties no longer produced in significant quantities. Size requirements for named varieties and non-listed varieties not mentioned in this rulemaking would not be changed for the 1990 season.

Variety-specific size requirements are implemented when one variety is produced in commercially significant quantities. Such quantity is considered by the three committees to be total shipments of a variety exceeding 10,000 packages during a season. In making this volume determination, individual consumer packages weighing 15 pounds net weight or less are converted to 25 or 28 pound equivalent containers. Nectarine and peach equivalent packages are based on 25-pound packages. Plum equivalent packages are based on 28-pound packages. For instance, two individual consumer nectarine packages of 11 pounds and 14 pounds would be counted as one 25-pound package of the fruit. When individual consumer packages of plums weighing 15 pounds or less are shipped, the smaller packages would be considered together as 28-pound packages For instance, two 14–pound packages of plums would be counted as one 28–pound package.

Nectarine, peach and plum varieties that exceeded 10,000 shipped packages for the first time during the 1989 season are listed in the proposed regulations below. These varieties would be regulated under variety-specific size requirements for each fruit.

When a variety is no longer produced in significant quantities—which the committees have determined to be less than 5,000 packages during a season—it is removed from the variety-specific size requirement list. The varieties listed in the regulations below are proposed to be removed from their respective variety-specific size requirement lists for the 1990 season. During the 1989 season these varieties were not produced in quantities significant enough to warrant variety-specific size coverage. However, these varieties would be subject to minimum size requirements for non-listed varieties because, in combination with other varieties of the fruit, they are produced in quantities significant enough to warrant some size coverage. The size requirements established for non-listed varieties are less restrictive than those established for listed varieties, but help provide retailers and consumers with the fruit they prefer. The 10,000 and 5,000 package quantities used in making these determinations have been used in prior seasons.

For nectarines, the variety-specific size requirements and non-listed size requirements are specified in paragraphs (a)(2) through (a)(8) of § 916.356 as amended July 3, 1989 (54 FR 28758). To implement the nectarine committee's unanimous recommendations for this action, paragraph (a)(5)(i) of § 916.356 would be amended to establish variety-specific size requirements for five nectarine varieties that were produced in commercially significant quantities of more than 10,000 packages for the first time during the 1989 season. These varieties are Nect-5, One One, Summer Star, Tasty Gold, and 32–79–22.

The nectarine committee also unanimously recommended that four varieties be deleted from variety-specific size requirements because their production was less than 5,000 packages during the 1989 season. The nectarine varieties proposed to be removed from the variety-specific list and made subject to the non-listed variety size requirements specified in paragraphs (a)(6) through (a)(8) of § 916.356 are Early Star, Granderli, June Grand and Star Bright.

For peaches, the variety-specific size requirements and non-listed size requirements are specified in paragraphs (a)(2) through (a)(5) and in paragraphs (b) and (c) § 917.459 as amended July 3, 1989 (54 FR 28758). The peach committee unanimously recommended that variety-specific size requirements be established for ten peach varieties. Paragraph (a)(4) § 917.459 would be amended to include new varieties David Sun, Early May Crest, June Sun, Kingscrest, Sierra Crest, Snow Flame and Summer Crest; paragraph (a)(5) would be amended to include new varieties Jefferson Sun, John Henry and Zee Lady.

The Peach committee also unanimously recommended that six varieties be deleted from variety-specific size requirements because the production of these varieties was less than 5,000 packages during the 1989 season. The peach varieties proposed to be removed from the variety-specific list and made subject to the non-listed variety size requirements as specified in paragraphs (b) and (c) of § 917.459 are Fortyniner, Franciscan, Redhaven, Sun Lady, Toreador and Willie Red.

For plums, the variety-specific size requirements and non-listed size requirements are specified in paragraphs (b) and (c) of § 917.460 as amended July 3, 1989 (54 FR 28758). To implement the plum committee's unanimous recommendation for this action, paragraph (b) of § 917.460 would be amended to establish variety-specific size requirements for four plum varieties that were produced in commercially significant quantities for the first time during the 1989 season. These varieties are Aleta Rose, Black Flame, Black Premium and 5–100.

The plum committee also unanimously recommended that three varieties be deleted from variety-specific size requirements because their production was less than 5,000 packages during the 1989 season. The plum varieties proposed to be removed from the variety-specific list and made subject to the non-listed variety size requirements specified in paragraph (c) of § 917.460 are Andy's Pride, King James and Rosa Ann.

Currently, handlers cannot ship Black Diamond plums unless they are of a size that an 8-pound sample contains no more than 59 plums. However, the Black Diamond variety is similar in size and shape to the Friar plum variety which has a minimum size requirement of 56 plums per 8-pound sample. Both of these varieties have a height-to-diameter ratio of .85. Thus the Plum Size Subcommittee unanimously recommended on October 11, 1989, and the plum committee concurred unanimously, that the minimum size requirement for the Black Diamond variety should be changed to 56 plums per 8–pound sample

The nectarine committee unanimously recommended extending, for the 1990 season, provisions of an interim final rule published April 27, 1989 (54 FR 18095) which relaxed variety-specific size requirements for early shipments of May Glo variety nectarines from 96 size to 108 size. That action amended paragraph (a)(2) of § 916.356 to include shipment of the May Glo variety at the reduced size effective April 25, 1989, through May 5, 1989, because May Glos grown under desert conditions in the Coachella Valley of California do not develop to normal size levels for that variety. Amended paragraph (a)(2) of this proposed action would similarly relax the size requirements for the May Glo variety through May 5, 1990. Amended paragraph (a)(3) of this proposed action would require that May

Glos shipped on or after May 6, 1990, be at least 96 size. A mid-winter freeze is expected to reduce the 1990 Coachella Valley May Glo crop.

The addition of several new varieties of nectarines, peaches and plums to the variety-specific size requirements, and the removal of certain other varieties from those requirements, would not be detrimental to small entities. These changes are expected to help the respective commodity industries to provide the sizes of fruit that are desired in fresh markets. Such actions would be beneficial in maintaining current markets and developing new ones.

Container Marking Requirements

Section 916.350(a)(1)(iii) for nectarines and § 917.442(a)(3)(iii) for peaches, as amended July 3, 1989 (54 FR 27857), specify that the size designations of these fruit, loose-filled or tight filled, in any container shall be marked according to the number of fruit when packed in molded forms (tray packs) in No 22D standard lug boxes and in accordance with standard pack requirements.

Both the nectarine and peach committees unanimously recommended that a table listing the tray-pack sizes and corresponding range of the number of fruit per 16-pound sample be included in the container marking requirements. This would provide greater specificity in the marking requirements and aid inspectors in determining whether containers are properly marked as to size. Thus, a new sub-paragraph and table for nectarines is proposed to be added as (a)(1)(iv) of § 916.350 and a new sub-paragraph and table for peaches is proposed to be added as (a)(3)(iv) of § 917.442.

Section 917.454(a)(4)(ii) specifies that the size of plums in loose-filled or tight-filled containers shall be marked in accordance with "four-basket-crate equivalent" designations. Four-basket-crate equivalents are based on the arrangement of the fruit in the top layer of an 8-pound box. For example, a "2×3" designation means that the top layer of fruit contains four sections (baskets) of two rows with three plums in each row; a "3×3" designation would mean four sections of three rows with three plums in each row. Taller plums of a particular diameter weigh more than squatter plums of the same diameter. Thus, an 8-pound sample of a taller variety will have fewer plums than an 8-pound sample of a squatter variety of the same diameter.

An "Equivalent Plum Sizes" table is proposed to be added to § 917.454(a)(4). While four-basket-crate containers are no longer used, the terminology continues to be used by handlers to indicate plum sizes.

The Plum Size Subcommittee unanimously recommended, and the Plum Commodity Committee unanimously concurred, that an Equivalent Plum Size table be included in the regulations and that the table include a column to account for large plums that fall between current "2×2" and "2×3" size designations. The column is proposed for a new size designation which would pack two rows of alternating two and three columns of plums, and be designated "2×2×3". This column is proposed because the spread between "2×2" and "2×3" sizes is greater than that between any of the other sizes listed in the table. Size "2×2×3" would accommodate handlers of large plums who need a more accurate representation of large sizes now being packed. Because larger sizes command higher prices, the proposed new designation is expected to prove valuable to plum shippers in 1990. The maximum number of plums in 8-pound samples for the proposed "2×2×3" size configuration is found in the second column of the Equivalent Plum Size table under § 917.454(a)(4)(ii) in this proposed rule. This change would provide for greater specificity in the marking requirements and aid inspectors in determining whether containers are properly marked as to size.

The plum committee recommended that equivalent plum sizes for new varieties not listed individually on the chart be based on each variety's characteristic shape in 1990 and future seasons. These proposed additional designations are listed under "All Other Varieties" at the bottom of the table "Equivalent Plum Sizes" in § 917.454(a)(4)(ii), as shown in the proposed regulatory language below.

The addition of the container marking requirements to include equivalent tray-pack designations on packages of nectarines and peaches, and equivalent four-basket crate designations on packages of plums are expected to increase efficiency of handling the fruit in the marketplace. These changes are not expected to result in additional marketing costs to the industries.

Container Requirements

In May, 1989, one handler requested that the plum committee recommend the test marketing of plums packed in 24-pound net weight, volume-filled containers for 1989 marketing year. These containers are the same length and width as the 28-pound net weight containers currently used by the industry, but are 5¾ inches deep rather than 6½ inches deep. According to the handler, a buyer on the east coast of the United States preferred the smaller containers because that size container reduced handling costs and enhanced displays of the fruit in stores. After considerable debate, the committee rejected the handler's request. However, the Department authorized the use of 24-pound plum containers for the 1989/90 marketing season in an interim final rule on June 9, 1989 (54 FR 24667), and in a final rule on August 30, 1989 (54 FR 35867).

The Plum Packaging Subcommittee met in October to review the same request for the 1990 season. After considering a plum committee report on use of the 24-pound container during the 1989 season, the subcommittee voted not to approve the request. In November, the issue was again considered by the plum committee. After lengthy debate, the committee did not recommend use of the 24-pound container for the 1990 marketing season. It was the consensus of committee members that justification for the new container size was not sufficient to warrant changing the longstanding industry policy of standardizing container size. Some committee members believed that reduced handling costs and enhanced displays, as described by the handler, were not readily apparent in the 1989 season and therefore are not reason enough to warrant a new container size for the 1990 marketing year. Most committee members contended that if an exception was made in this case, a precedent would be established that would require approval of future requests to use other sized containers. It was also the consensus of the plum committee members that the use of different sized containers would lead to price confusion in the marketplace.

The handler contended that there was no price confusion when the 24-pound container was used in 1989 because there was only one buyer and because the quantity shipped was approximately 1 percent of total industry production. The handler contended that unless the buyer's conditions are met, the buyer will purchase plums from sources outside California.

The Department carefully considered the votes of the committee, the differing viewpoints of the individual committee members, and other available information. The approval of the 24-pound net weight container for the 1989 season did not result in a proliferation of handler requests for different sized containers, nor was there evidence of disruption within the marketplace. Therefore, the Department is proposing

to extend its 1989 authorization of the 24-pound container for the 1990 season.

Maturity Requirements

The maturity requirements established under these marketing orders are intended to provide tree fruit that better meet consumer preferences. Over the years, consumers have indicated that they prefer fruit that is sweet and flavorful. To help ensure that fruit reaching the marketplace is well-matured, the maturity subcommittees and the inspection service inspectors meet after each harvest season to review surface color maturity guides and other tests used in the previous season and recommend appropriate changes for the following season. Any changes in maturity guides are recommended to the respective nectarine, peach and plum committees. The determination of which color chip will apply to each variety is based upon careful analysis, usually over several seasons, by the inspection service and the maturity subcommittees of the nectarine, peach and plum committees. A short, descriptive statement serves as the maturity guide for each plum variety.

A color chip designation for any particular nectarine and peach variety, or maturity guide for a plum variety, may be changed during the course of a season through the maturity variance process. The nectarine, peach and plum committees recommended that the maturity assignments for their respective fruit varieties, in place at the beginning of the 1989 season, be carried over to the 1990 season with certain exceptions.

Three of the 1989 season variance requests resulted in changes in the color chip designations for the Grand Stan, Early May and Tasty Free nectarine varieties. It is proposed that these designations be used for the 1990 season because experience during the 1989 season indicated that these are considered to be the appropriate chip designations in determining whether these varieties have reached the well-matured state.

Variance requests during the 1989 season also resulted in the addition of "supervisor discretion" to the maturity designations of four other varieties of nectarines—Bob Grand, Flamekist, Ruby Grand and Son Red. The requests were based on conditions arising during the 1989 season which prevented these varieties from attaining the expected ground color for that variety, while attaining the well-matured standard. It is anticipated that such conditions may continue in the 1990 season. Therefore, it is proposed that the term "supervisor discretion" continue to be included in the maturity guides for those four varieties of nectarines during the 1990 season. The term "supervisor discretion" provides inspection service supervisors with the authority to certify that a particular lot of a variety is well-matured, based on factors in addition to ground color, such as shape, flesh firmness or measurement of soluble solids. Thus, "supervisor discretion" is proposed for those four nectarine varieties to allow for additional flexibility and oversight in order to provide an appropriate measure of the well-matured standard for those varieties of nectarines. It is also proposed that the newly listed peach variety "Sprague Last Chance" and the newly listed plum varieties "Black Gold" and "Black Torch" also include "supervisor discretion" in their designated maturity guides. This will allow for additional flexibility and oversight of the maturity determination process for these newly listed varieties.

This proposed rule would assign maturity guides to new varieties for which guides have not been previously specified. The nectarine committee unanimously recommended that the following two varieties and color chip maturity guides be added to Table I in paragraph (a) of § 916.356: August Red—J and Red Lion—J. The peach committee unanimously recommended that the following four varieties and color chip maturity guides be added to Table I in paragraph (a) of § 917.459: Goldcrest—H, Sierra Crest—J, Sprague Last Chance—L or supervisor discretion, and Topcrest—H. The plum committee unanimously recommended that the following two varieties and descriptive maturity guides be added to Table I of paragraph (a) of § 917.460: Black Gold—Full dark red surface color with spring or with supervisor discretion; and Black Torch—Full dark red surface color with smooth shoulders or with supervisor discretion.

The maturity designations for the Flavortop and Fantasia varieties of nectarines are proposed to be changed at the recommendation of the inspection service because the proposed new maturity designations are considered to be the more appropriate designations of the well-matured condition of the two varieties. The Flavortop variety began the 1989 season at J but was changed to I with an additional 10 percent surface tolerance or supervisor discretion as the result of a variance request. The inspection service recommended that the appropriate maturity designation for the Flavortop variety for the 1990 season would be to return to the J color chip, but to add "supervisor discretion" to allow for additional flexibility and oversight in order to provide an appropriate measure of the well matured standard for that variety. The Fantasia variety began the 1989 season at L but was changed to I as the result of a variance request. The inspection service recommended that J is the appropriate maturity designation for the Fantasia variety in consideration of expected conditions for the 1990 season. Thus, the nectarine varieties and maturity assignments in Table I of § 916.356(a) would remain the same as they were at the beginning of the 1989 season, with the following exceptions:

August Red—J
Bob Grand—change from L to L or supervisor discretion
Early May—change from G to F
Fantasia—change from L to J
Flamekist—change from L to L or supervisor discretion
Flavortop—change from J to J or supervisor discretion
Grand Stan—change from C to F
Red Lion—J
Ruby Grand—change from J to J or supervisor discretion
Son Red—change from L to L or supervisor discretion, and
Tasty Free—change from L to J

As well as including the newly listed peach varieties and their maturity determinations, the maturity assignment in Table I of § 917.459(a) for the Prime Crest peach variety is proposed to be changed from G to H. This proposal is based on inspection service observations and peach maturity subcommittee and committee recommendations which indicate that H would be the most appropriate maturity designation for that variety during the 1990 season. Thus, the peach varieties and maturity assignments in Table I of § 917.459(a) would remain the same as they were at the beginning of the 1989 season with the following exceptions:

Goldcrest—H
Prime Crest—change from G to H
Sierra Crest—H
Sprague Last Chance—L or supervisor discretion
Topcrest—H

The plum committee recommended that all existing 1989 maturity guides be used, without change, for the 1990 season. Thus, the plum varieties and maturity assignments in Table I of § 917.460(a) would remain the same as they were at the beginning of the 1989 season with the following exceptions:

Black Gold—Full dark red surface color with spring or with supervisor discretion

Black Torch—Full dark red surface color with smooth shoulders or with supervisor discretion

The Department has determined that the proposed actions assigning maturity guides to new varieties of the tree fruit and the continuance in 1990 of existing maturity guides with changes for some nectarine and peach varieties, would be beneficial in improving the quality of the fruit marketed and would not be detrimental to small entities in the three industries.

Maturity Variance Procedure Change

The variance appeal process provides authority for granting variances from the maturity guides during the harvest season.

The maturity variance procedure provides for changes in a color chip designation by lot of a particular variety when, due to changes in conditions, that lot reaches a condition of well-maturity, but does not manifest the expected ground color for that variety. A producer or handler may request a variance in the designated color standard by asking for a review by an inspection service supervisor and an appropriate industry fieldman. If either or both believe a variance is warranted, a variance request is forwarded to the appropriate nectarine, peach or plum maturity subcommittee. An appeal of the subcommittee's decision, if necessary, can be made to the committee manager who will notify the appropriate Appeal Committee. Prompt decisions on variance requests are extremely important because of the perishability of the fruit.

The nectarine, peach and plum committees recommended a minor change which is intended to hasten decisions and thus improve the maturity variance process. This proposed change should not result in additional costs and should be beneficial to the industries.

Each committee unanimously recommended that, in the event the committee manager is not available, a designee may call a meeting of the appropriate commodity's Appeal Committee to process a maturity variance appeal. A person appealing a maturity subcommittee variance decision should notify the committee manager, or the committee manager's designee, of the appeal. This proposed change should provide for more expedient reviews of maturity variance requests by providing for an additional committee staff member with authority to continue the appeal process. Thus, the words ", or the committee manager's designee," is proposed to be added following the words "Nectarine Administrative Committee Manager" in paragraph (a)(1)(vi) of § 917.356 for nectarines; the words "Peach Commodity Committee Manager" in paragraph (a)(1)(vi) of § 917.459 for peaches; and the words "Plum Commodity Committee Manager" in paragraph (a)(1)(v) of § 917.460 for plums.

Based on the above, the Administrator of the AMS has determined that the changes proposed above would not have a significant economic impact on a substantial number of small entities.

The committees' recommendations, other information, and all written comments timely received will be considered before determinations are made on the proposed changes covered in this document. Commenters are urged to submit their reasons in support of or in opposition to this proposed rule.

List of Subjects in 7 CFR Parts 916 and 917

Marketing agreements, Nectarines, Peaches, Plums, Reporting and recordkeeping requirements

For the reasons set forth in the preamble, it is proposed that 7 CFR parts 916 and 917 be amended as follows:

1. The authority citation for 7 CFR parts 916 and 917 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

PART 916—NECTARINES GROWN IN CALIFORNIA

2. A new paragraph (a)(3)(iv) and Table I is added to § 916.350 specifying the weight-count standards for all varieties of nectarines packed in loose-filled containers to read as follows:

§ 916.350 Nectarine Regulation 8.

(a) * * *

(3) * * *

(iv) The size of nectarines, when packed in loose-filled or tight-filled containers, shall be marked in accordance with the following table which specifies the tray-pack size designation in Column A with the corresponding numerical range of nectarines in a 16-pound sample of each size of the fruit in Column B:

TABLE I.—WEIGHT-COUNT STANDARDS FOR ALL VARIETIES OF NECTARINES PACKED IN LOOSE OR TIGHT-FILLED CONTAINERS

Column A tray pack size designation	Column B no. of nectarines in 16-pound sample
108	88–92
96	79–87
88	76–78
84	68–75
80	62–67
72	57–61
70	52–56
64	47–51
60	44–46
56	40–43
54	37–39
50	34–36
48	29–33
42	27–28
40	26
36	25

* * * * *

3. Table I of paragraph (a) of § 916.356 is amended by adding in alphabetical order the following nectarine varieties to Column A and their corresponding maturity guides to Column B:

§ 916.356 Nectarine Regulation 14

(a) * * *

(1) * * *

August Red.....J

* * * * *

Red Lion.....J

4. Table I of paragraph (a) of § 916.356 is amended by removing the maturity guides from Column B and adding the following revised maturity guides for the respective varieties in Column A:

* * * * *

Bob Grand.....L or supervisor discretion

* * * * *

Early May.....F

* * * * *

Fantasia.....J

* * * * *

Flamekist.....L or supervisor discretion

* * * * *

Flavortop.....J or supervisor discretion

* * * * *

Grand Stan.....F

* * * * *

Ruby Grand.....J or supervisor discretion

* * * * *

Son Red.....L or supervisor discretion

* * * * *

Tasty Free.....J

* * * * *

5. Paragraph (a)(1)(vi) of § 916.356 is amended by adding the words ", or the committee manager's designee," to follow the words "Nectarine Administrative Committee Manager". As revised, § 916.356(a)(1)(vi) reads as follows:

(a) * * *

(1) * * *

(vi) To file an appeal, the requester shall notify the Nectarine Administrative Committee manager, or the committee manager's designee, who will immediately refer the appeal to the Appeal Committee. The Appeal Committee shall consist of the Chairman of the Peach Commodity Committee, the Chairman of the Plum Commodity Committee, and the appropriate Federal State shipping point inspection program supervisor, or their designees. The Appeal Committee shall review all documentation and any further information provided by the requester. Decisions of the Appeal Committee must be made within one day from the time the Nectarine Administrative Committee manager, or the committee manager's designee, is notified of the appeal.

* * * * *

6. The introductory text of paragraphs (a)(2) and (a)(3) of § 916.356 is amended by changing the year "1989" to "1990". As revised, the introductory text of paragraphs (a)(2) and (a)(3) of § 916.356 reads as follows:

(a) * * *

(2) Any package or container of May Glo variety nectarines through May 5, 1990, or Aurelio Grand, Maybelle, Mayfire, or Royal Delight variety nectarines unless:

* * * * *

(3) Any package or container of May Glo variety of nectarines on or after May 6, 1990, or Early Diamond, or Mayfair variety nectarines, unless:

* * * * *

7. Paragraph (a)(4) of § 916.356 is amended by removing nectarine varieties Early Star, June Grand and Star Bright.

8. Paragraph (a)(5) of § 916.356 is amended by adding in alphabetical order the nectarine varieties Nect-5, One One, Summer Star, Tasty Gold, and 32-79-22 and by removing the nectarine variety Granderli.

PART 917—FRESH PEARS, PLUMS AND PEACHES GROWN IN CALIFORNIA

9. A new paragraph (a)(3)(iv) and Table I is added to § 917.442 specifying weight-count standards for all varieties of peaches packed in loose-filled containers and reads as follows:

§ 917.442 Peach Regulation 8.

(a) * * *

(3) * * *

(iv) The size of peaches, when packed in loose-filled or tight-filled containers, shall be marked in accordance with the following table which specifies in Column A the number of peaches in a 16-pound sample of each size of the fruit listed in Column B:

TABLE I.—WEIGHT-COUNT STANDARDS FOR ALL VARIETIES OF PEACHES PACKED IN LOOSE OR TIGHT-FILLED CONTAINERS

Column A tray pack size designation	Column B number of peaches in 16-pound sample
96	84-96
88	78-83
84	74-79
80	65-73
72	60-64
70	55-59
64	47-54
60	46
56	44-45
54	39-43
50	35-38
48	31-34
42	27-30
40	26
36	25

* * * * *

10. Paragraph (a)(4)(ii) of § 917.454 is revised by adding a new Table I specifying equivalent plum sizes for 8-pound samples to read as follows:

§ 917.454 Plum Regulation 17

(a) * * *

(4) * * *

(ii) The size of plums loose-filled or tight-filled in standard lug boxes, cartons, or other packages or containers shall be indicated in accordance with the equivalent size designation for such plums when packed in four-basket crates, such as "4 X 4 size," etc. Such containers shall be marked in accordance with the following table:

TABLE I.—EQUIVALENT PLUM SIZES: MAXIMUM NUMBER OF PLUMS IN 8-POUND SAMPLE

	2×2	2×2×3	2×3	2×3×3	3×3	2×3×4	3×4	3×4×4	4×4	3×4×5	4×5	4×5×5	5×5	5×6	6×6
Aleta Rose	16	18	21	25	28	32	36	42	50	58	67				
Ambra	11	15	19	23	27	31	35	43	51	59	67				
Angee	11	15	19	23	27	31	35	43	51	59	67				
Angeleno	20	22	25	28	31	35	39	43	54	63	67				
Autumn Giant	16	18	21	25	28	32	36	42	50						
Autumn Rosa	15	17	20	23	27	31	35	40	50	61	72				
Black Beaut	19	21	24	27	30	34	38	45	52	62	69				
Black Diamond	21	24	28	31	34	38	42	50	56						
Black Flame	20	22	25	28	31	35	39	43	54	63					
Black Gold	20	22	25	28	31	35	39	43	54	63					
Black Knight	16	18	21	25	28	32	36	42	50	58					
Black Premium	20	23	26	29	32	36	40	46	54						
Black Torch	20	22	25	28	31	35	39	43	54						
Blackamber	21	24	28	31	34	38	42	50	56						
Carolyn Harris	20	22	25	28	31	35	39	46	54	61					
Casselman	14	16	19	22	26	30	34	38	48	56	63				
Catalina	21	24	28	31	34	38	42	50	56						
Durado	21	24	28	31	34	38	42	50	58	66	74				
Early Hawaiian Ann	17	19	22	26	29	33	37	44	52	60					
Ebony	21	24	28	31	34	38	42	50	56	66					
El Dorado		24					44	50	62	68					
Empress							30	35	43	50	57				
Freedom	21	24	28	31	34	38	42	50	56						
French Prune	15	17	20	24	28	32	36	43	52	61	71	75	83	115	139
Friar	21	24	28	31	34	38	42	50	56						

TABLE I.—EQUIVALENT PLUM SIZES: MAXIMUM NUMBER OF PLUMS IN 8-POUND SAMPLE—Continued

	2×2	2×2×3	2×3	2×3×3	3×3	2×3×4	3×4	3×4×4	4×4	3×4×5	4×5	4×5×5	5×5	5×6	6×6
Frontier	17	19	22	26	29	33	37	43	52	61	.....				
Gar-Rosa	19	21	24	27	30	34	38	45	53	64	71				
Grand Rosa	17	19	22	26	29	33	37	44	52	54	.....				
Imp. L. Santa Rosa	17	19	22	26	29	33	37	44	52	60	64				
July Red	17	19	22	26	29	33	37	44	52	60	64				
July Santa Rosa	17	19	22	26	29	33	37	44	52	60	69				
Kelsey	14	16	19	22	26	30	34	39	47	.....	.....				
King David	16	18	21	25	28	32	36	42	50	.....	.....				
King Richard	20	22	25	28	31	35	39	43	54	.....	.....				
King's Black	16	18	21	25	28	32	36	42	50	58	.....				
Kings Diamond	16	18	21	25	28	32	36	42	50	58	.....				
Laroda	16	18	21	25	28	32	36	42	50	58	.....				
Late Santa Rosa	17	19	22	26	29	33	37	44	52	60	64				
Linda Rosa	14	16	19	22	26	30	35	41	48	59	63				
Mariposa	20	22	25	28	31	35	39	46	54	61	.....				
May Rosa	19	21	24	27	30	34	38	45	53	64	71				
Midsummer	20	22	25	28	31	35	39	43	54	63	.....				
Moyer	15	17	20	24	28	32	36	43	52	61	71	75	83	115	139
Nubiana	21	24	28	31	34	38	42	50	56	.....	.....				
President	.....	.....	.....	.....	.....	.....	33	38	45	52	57				
Prima Black	19	21	24	27	30	34	38	45	52	62	69				
Queen Ann	16	18	21	25	28	32	36	42	50	.....	.....				
Queen Rosa	20	23	26	29	32	36	40	46	53	.....	.....				
Red Beaut	19	21	24	27	30	34	38	45	52	62	74				
Red Rosa	17	19	22	26	29	33	37	44	52	60	64				
Redroy	14	16	19	22	26	30	34	39	47	58	.....				
Rich Red	21	24	28	31	34	38	42	50	58	66	74				
Rosemary	14	16	19	22	26	30	34	39	50	.....	.....				
Royal Diamond	21	24	28	31	34	38	42	50	56	.....	.....				
Royal Garnet	17	19	22	26	29	33	37	44	52	62	69				
Royal Red	19	21	24	27	30	34	38	45	52	62	74				
Roysum	15	17	20	23	27	31	35	40	50	61	74				
Santa Rosa	17	19	22	26	29	33	37	44	52	62	69				
Sharron's Plum	17	19	22	26	29	33	37	43	52	63	.....				
Simka	16	18	21	25	28	32	36	42	50	.....	.....				
Spring Beaut	19	21	24	27	30	34	38	45	52	62	74				
Standard	.....	.....	.....	.....	.....	.....	.....	.....	.....	52	62	.....	83		
Wickson	16	18	21	25	28	32	36	42	51	.....	.....				
5-100	21	24	28	31	34	38	42	50	56	.....	.....				
All other varieties:															
>.99 ratio	14	16	19	22	26	30	34	39	47	55	65	75	83	115	139
.90 to .99 ratio	18	20	23	27	30	34	38	43	51	60	67	75	83	115	139
<.90 ratio	20	23	27	30	33	37	42	50	56	64	71	75	83	115	139

* * * * *

11. Paragraph (a)(5) of § 917.454 is amended by changing the year designation 1989/90 to 1990/91. As revised, § 917.454(a)(5) reads as follows:

(a) * * *

(5) Each package or container of loose-filled or tight-filled plums other than bulk bin containers, master containers of consumer packages, and individual consumer packages in master containers shall bear on one outside end, in plain sight and in plain letters, the words "28 pounds net weight" or, for the 1990/91 marketing season, "24 pounds net weight,", whichever is appropriate.

* * * * *

12. Paragraph (a)(1)(vi) of § 917.459 is amended by adding the words ", or the committee manager's designee," to follow the words "Peach Commodity Committee Manager". As revised, § 917.459(a)(1)(vi) reads as follows:

§ 917.459 Peach Regulation 14

(a) * * *

(1) * * *

(vi) To file an appeal, the requester shall notify the Peach Commodity Committee manager, or the committee manager's designee, who will immediately refer the appeal to the Appeal Committee. The Appeal Committee shall consist of the Chairman of the Plum Commodity Committee, the Chairman of the Nectarine Administrative Committee, and the appropriate Federal-State shipping point inspection program supervisor, or their designees. The Appeal Committee shall review all documentation and any further information provided by the requester. Decisions of the Appeal Committee must be made within one day from the time the Peach Commodity Committee manager, or the committee manager's designee, is notified of the appeal.

* * * * *

13. Paragraph (a)(4) of § 917.459 is amended by adding in alphabetical order the peach varieties David Sun, Early May Crest, Kingscrest, June Sun, Sierra Crest, Snow Flame and Summer Crest, and by removing the peach varieties Redhaven and Willie Red.

14. Paragraph (a)(5) of § 917.459 is amended by adding in alphabetical order the peach varieties Jefferson Sun, John Henry and Zee Lady, and by removing the peach varieties Fortyniner, Franciscan, Sun Lady and Toreador.

15. Table I of paragraph (a) of § 917.459 is amended by adding in alphabetical order the following varieties of peaches to Column A and corresponding maturity guides to Column B:

* * * * *

Goldcrest ..... H

* * * * *

Sierra Crest ..... H

Sprague Last Chance L
or supervisor discretion

* * * * *

Topcrest ..... H

* * * * *

16. Table I of paragraph (a) of § 917.459 is amended by removing the

maturity guide from Column B of the following peach variety under Column A and adding the revised maturity guide for that variety in Column B:

Prime Crest.....H

17. Paragraph (a)(1)(v) of § 917.460 is amended by adding the words ", or the committee manager's designee," to follow the words "Plum Commodity Committee Manager". As revised, § 917.460(a)(1)(v) reads as follows:

§ 917.460 Plum Regulation 19.

(a) * * *

(1) * * *

(v) To file an appeal, the requester shall notify the Plum Commodity Committee manager, or the committee manager's designee, who will immediately refer the appeal to the Appeal Committee. The Appeal Committee shall consist of the Chairman of the Peach Commodity Committee, the Chairman of the Nectarine Administrative Committee, and the appropriate Federal-State shipping point inspection program supervisor, or their designees. The Appeal Committee shall review all documentation and any further information provided by the requester. Decisions of the Appeal Committee must be made within one day from the time the Plum Commodity Committee manager, or the committee manager's designee, is notified of the appeal.

* * * * *

18. Table I of paragraph (a) of § 917.460 is amended by adding in alphabetical order the following varieties of plums to Column A and corresponding maturity guides to Column B:

Black Gold—Full dark red surface color with spring or with supervisory discretion, and

Black Torch—Full dark red surface color with smooth shoulders or with supervisory discretion.

19. Table II of paragraph (b) of § 917.460 is amended by adding in alphabetical order the following varieties of plums to Column A and their corresponding number of plums-per-sample to Column B:

Aleta Rose.....54
Black Flame.....54
Black Premium.....54
5–100.....54

20. Table II of paragraph (b) of § 917.460 is amended by removing the following plum varieties from Column A and their corresponding plums-per-sample number from Column B:

Andys Pride.....69
King James.....50
Rosa Ann.....69

Dated: March 23, 1990.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90–7067 Filed 3–28–90; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Parts 1006, 1007, 1011, 1012, 1013, 1030, 1032, 1033, 1036, 1040, 1046, 1049 1050, 1064, 1065, 1068, 1076, 1079, 1093, 1094, 1096, 1097, 1098, 1099, 1106, 1108, 1120, 1124, 1126, 1131, 1132, 1134, 1135, 1137, 1138, and 1139

[Docket No. AO–356–A27, etc; DA–89–028]

Milk in Certain Marketing Areas; Decision on Proposed Amendments to Marketing Agreements and to Orders

7 CFR Part	Marketing area	AO Nos.
1006	Upper Florida	AO–356–A27
1007	Georgia	AO–366–A30
1011	Tennessee Valley	AO–251–A33
1012	Tampa Bay	AO–347–A30
1013	Southeastern Florida.	AO–286–A37
1030	Chicago Regional	AO–361–A26
1032	Southern Illinois-Eastern Missouri.	AO–313–A37
1033	Ohio Valley	AO–166–A58
1036	Eastern Ohio-Western Pennsylvania.	AO–179–A53
1040	Southern Michigan	AO–225–A40
1046	Louisiana-Lexington-Evansville.	AO–123–A59
1049	Indiana	AO–319–A36
1050	Central Illinois	AO–355–A25
1064	Greater Kansas City.	AO–23–A58
1065	Nebraska-Western Iowa.	AO–86–A45
1068	Upper Midwest	AO–178–A42
1076	Eastern South Dakota.	AO–260–A28
1079	Iowa	AO–295–A39
1093	Alabama-West Florida.	AO–386–A8
1094	New Orleans-Mississippi.	AO–103–A50
1096	Greater Louisiana	AO–257–A37
1097	Memphis, Tennessee.	AO–219–A44
1098	Nashville, Tennessee.	AO–184–A53
1099	Paducah, Kentucky.	AO–183–A43
1106	Southwest Plains	AO–210–A49
1108	Central Arkansas	AO–243–A40
1120	Lubbock-Plainview, Texas.	AO–328–A27
1124	Pacific Northwest	AO–368–A17
1126	Texas	AO–231–A57
1131	Central Arizona	AO–271–A27
1132	Texas Panhandle	AO–262–A37
1134	Western Colorado	AO–301–A20
1135	Southwestern Idaho-Eastern Oregon.	AO–380–A7
1137	Eastern Colorado	AO–326–A24
1138	Rio Grande Valley	AO–335–A33
1139	Great Basin	AO–309–A28

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rules.

SUMMARY: This action adopts amendments to those orders that previously provided tentative and final price announcements for Class II milk. Interim amendments effective December 4, 1989, changed the procedure to provide that a final Class II milk price for the month will be announced on or before the 15th day of the preceding month. As provided in the interim amendments, if this Class II price is less than the Class III price for that month (which is not announced until the 5th day of the following month), the difference for that month will be added in computing the Class II price that applies two months later.

The changes adopted in this decision are the same as the interim amendments and are based on evidence submitted at a public hearing held in Alexandria, Virginia on August 22, 1989. Interested parties were given until December 15, 1989, to file comments or exceptions. No comments were received.

Referenda will be conducted in four orders and cooperative associations will be polled in 32 orders to determine whether producers favor issuance of the orders as amended.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–4829.

SUPPLEMENTARY INFORMATION: This administration action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The amended orders will promote more orderly marketing of milk by producers and regulated handlers.

Prior documents in this proceeding:

Notice of Hearing: Issued August 10, 1989; published August 16, 1989 (54 FR 33709).

Recommended Decision: Issued October 31, 1989; published November 8, 1989 (54 FR 46904).

Tentative Decision: Issued November 8, 1989; published November 15, 1989 (54 FR 47527).

Interim Amendment of Orders: Issued November 28, 1989; published December 4, 1989 (54 FR 49955).

Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreements and the orders regulating the handling of milk in the aforesaid marketing areas. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), ("the Act") and the applicable rules of practice (7 CFR part 900), at Alexandria, Virginia, on August 22, 1989. Notice of such hearing was issued on August 10, 1989 and published August 16, 1989 (54 FR 33709).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Assistant Secretary, Marketing and Inspection Services, on November 8, 1989, filed with the Hearing Clerk, United States Department of Agriculture, a tentative decision containing notice of the opportunity to file written exceptions thereto. No exceptions or comments were received.

Upon approval of the tentative amendments to each of the 36 orders that were set forth in the tentative decision by more than two-thirds of the producers who during the representative period were engaged in the production of milk for sale in the respective marketing areas, the Acting Assistant Secretary, Marketing and Inspection Services, issued on November 28, 1989, interim amendments to each of the 36 orders, which became effective on December 4, 1989.

The material issues, findings and conclusions, rulings, and general findings of the tentative decision published in the November 15, 1989, issue of the **Federal Register** (54 FR 49955) are hereby ratified and affirmed without modification.

Rulings on Exceptions

No exceptions were received.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents, a Marketing Agreement regulating the handling of milk, and an Order amending the orders regulating the handling of milk in the aforesaid marketing areas, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered that this decision and the two documents annexed hereto be published in the **Federal Register**.

Determination of Producer Approval and Representative Period

August 1989 (except July 1989 for the Chicago Regional and Upper Midwest marketing areas) is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the orders, as amended on an interim basis and as hereby proposed to be amended, regulating the handling of milk in the aforesaid marketing areas except the Eastern Ohio-Western Pennsylvania, Louisville-Lexington-Evansville, Alabama-West Florida, and Nashville, Tennessee marketing areas, is approved or favored by producers, as defined under the terms of each of the orders as amended and as hereby proposed to be amended, who during such representative period were engaged in the production of milk for sale within the respective marketing areas.

Referendum Order To Determine Producer Approval; Determination of Representative Period; and Designation of Referendum Agent

It is hereby directed that referendums be conducted and completed on or before the 30th day from the date this decision is issued, in accordance with the procedure for the conduct of referenda (7 CFR 900.300–311), to determine whether the issuance of the attached orders as amended and as hereby proposed to be amended, regulating the handling of milk in the Eastern Ohio-Western Pennsylvania, Louisville-Lexington-Evansville, Alabama-West Florida, and Nashville, Tennessee, marketing areas is approved or favored by producers, as defined under the terms of each of the orders, as amended on an interim basis and as hereby proposed to be amended, who during such representative period were engaged in the production of milk for sale within the respective marketing areas.

The representative period for the conduct of such referendums are hereby determined to be August 1989.

The agents of the Secretary to conduct such referendums are hereby designated to be C. Mack Endsley (Eastern Ohio-Western Pennsylvania), Arnold M. Stallings (Louisville-Lexington-Evansville, and Nashville, Tennessee), and Dormal Newberry (Alabama-West Florida).

List of Subjects in 7 CFR Parts 1006, 1007, 1011, 1012, 1013, 1030, 1032, 1033, 1036, 1040, 1046, 1049, 1050, 1064, 1065, 1068, 1076, 1079, 1093, 1094, 1096, 1097, 1098, 1099, 1106, 1108, 1120, 1124, 1126, 1131, 1132, 1134, 1135, 1137, 1138, and 1139

Milk marketing orders.

Signed at Washington, DC, on March 23, 1990.

Jo Ann R. Smith,

Assistant Secretary for Marketing and Inspection Services.

Order Amending the Order Regulating the Handling of Milk in Certain Specified Marketing Areas

(This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.)

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) Findings. A public hearing was held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the aforesaid marketing areas. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure (7 CFR part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said orders as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the aforesaid marketing areas; and the minimum prices specified in the orders as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said orders as hereby amended regulate the handling of milk in the same manner as, and are

applicable only to persons in the respective classes of industrial or commercial activity specified in, marketing agreements upon which a hearing has been held.

Order Relative to Handling

It is therefore ordered that on and after the effective date hereof, the handling of milk in each of the specified marketing areas shall be in conformity to and in compliance with the terms and conditions of the orders, as amended, and as hereby amended, as follows:

The provisions of the orders amending the orders contained in the interim amendment of orders issued by the Acting Assistant Secretary, Marketing and Inspection Services, on November 28, 1989 and published in the **Federal Register** on December 4, 1989 (54 FR 49955), are adopted without change and shall be and are the terms and provisions of this order as set forth in full herein.

1. The authority citation for 7 CFR parts 1006, 1007, 1011, 1012, 1013, 1030, 1032, 1033, 1036, 1040, 1046, 1049, 1050, 1064, 1065, 1068, 1076, 1079, 1093, 1094, 1096, 1097, 1098, 1099, 1106, 1108, 1120, 1124, 1126, 1131, 1132, 1134, 1135, 1137, 1138, and 1139 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C 601–674.

PART 1006—MILK IN THE UPPER FLORIDA MARKETING AREA

2. In § 1006.50(b), the introductory text is revised to read as follows:

§ 1006.50 Class Prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1006.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the basic formula price for the second preceding month.

* * * * *

3. Section 1006.53 is revised to read as follows:

§ 1006.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the basic formula price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1006.50(b).

PART 1007—MILK IN THE GEORGIA MARKETING AREA

4. In § 1007.50(b), the introductory text is revised to read as follows:

§ 1007.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1007.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

5. Section 1007.53 is revised to read as follows:

§ 1007.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1007.50(b).

PART 1011—MILK IN THE TENNESSEE VALLEY MARKETING AREA

6. In § 1011.50(b), the introductory text is revised to read as follows:

§ 1011.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1011.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

7. Section 1011.53 is revised to read as follows:

§ 1011.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1011.50(b).

PART 1012—MILK IN THE TAMPA BAY MARKETING AREA

8. In § 1012.50(b), the introductory text is revised to read as follows:

§ 1012.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1012.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the basic formula price for the second preceding month.

* * * * *

9. Section 1012.53 is revised to read as follows:

§ 1012.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for tha following month, the basic formula price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1012.50(b).

PART 1013—MILK IN THE SOUTHEASTERN FLORIDA MARKETING AREA

10. In § 1013.50(b), the introductory text is revised to read as follows:

§ 1013.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1013.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the Class II price for the second preceding month was less than the Class III price for the second preceding month.

* * * * *

11. Section 1013.53 is revised to read as follows:

§ 1013.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1013.50(b).

PART 1030—MILK IN THE CHICAGO REGIONAL MARKETING AREA

12. In § 1030.50(b), the introductory text is revised to read as follows:

§ 1030.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1030.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

13. Section 1030.53 is revised to read as follows:

§ 1030.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1030.50(b).

PART 1032—MILK IN THE SOUTHERN ILLINOIS-EASTERN MISSOURI MARKETING AREA

14. In § 1032.50(b), the introductory text is revised to read as follows:

§ 1032.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1032.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

15. Section 1032.53 is revised to read as follows:

§ 1032.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1032.50(b).

PART 1033—MILK IN THE OHIO VALLEY MARKETING AREA

16. In § 1033.27, paragraphs (k)(1) and (k)(3) are revised to read as follows:

§ 1033.27 Additional duties of the market administrator.

* * * * *

(k) Publicly announce on or before:

(1) The 5th day of each month:

(i) The Class I price for the following month;

(ii) The Class III price for the preceding month;

(iii) The butterfat differential for the preceding month;

* * * * *

(3) The 15th day of each month, the Class II price for the following month computed pursuant to § 1033.51(b).

* * * * *

17. In § 1033.51(b), the introductory text is revised to read as follows:

§ 1033.51 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1033.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

PART 1036—MILK IN THE EASTERN OHIO-WESTERN PENNSYLVANIA MARKETING AREA

18. In § 1036.50(b), the introductory text is revised to read as follows:

§ 1036.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1036.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

19. Section 1036.53 is revised to read as follows:

§ 1036.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1036.50(b).

PART 1040—MILK IN THE SOUTHERN MICHIGAN MARKETING AREA

20. In § 1040.50(b), the introductory text is revised to read as follows:

§ 1040.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1040.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

21. Section 1040.53 is revised to read as follows:

§ 1040.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class II price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1040.50(b).

PART 1046—MILK IN THE LOUISVILLE-LEXINGTON-EVANSVILLE MARKETING AREA

22. In § 1046.50(b), the introductory text is revised to read as follows:

§ 1046.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1046.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

23. Section 1046.53 is revised to read as follows:

§ 1046.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1046.50(b).

PART 1049—MILK IN THE INDIANA MARKETING AREA

24. In § 1049.50(b), the introductory text is revised to read as follows:

§ 1049.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1049.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was lass than the Class III price for the second preceding month.

* * * * *

25. § 1049.53 is revised to read as follows:

§ 1049.53 Announcement of Class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1049.50(b).

PART 1050—MILK IN THE CENTRAL ILLINOIS MARKETING AREA

26. In § 1050.50(b), the introductory text is revised to read as follows:

§ 1050.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1050.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

27. Section 1050.53 is revised to read as follows:

§ 1050.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1050.50(b).

PART 1064—MILK IN THE GREATER KANSAS CITY MARKETING AREA

28. In § 1064.50(b), the introductory text is revised to read as follows:

§ 1064.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1064.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

29. Section 1064.53 is revised to read as follows:

§ 1064.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1064.50(b).

PART 1065—MILK IN THE NEBRASKA-WESTERN IOWA MARKETING AREA

30. In § 1065.50(b), the introductory text is revised to read as follows:

§ 1065.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The

Class II price shall be the basic Class II formula price computed pursuant to § 1065.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

31. Section 1065.53 is revised to read as follows:

§ 1065.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1065.50(b).

PART 1068—MILK IN THE UPPER MIDWEST MARKETING AREA

32. In § 1068.50(b), the introductory text is revised to read as follows:

§ 1068.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1068.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

33. Section 1068.53 is revised to read as follows:

§ 1068.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1068.50(b).

PART 1076—MILK IN THE EASTERN SOUTH DAKOTA MARKETING AREA

34. In § 1076.50(b), the introductory text is revised to read as follows:

§ 1076.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1076.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

35. Section 1076.53 is revised to read as follows:

§ 1076.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1076.50(b).

PART 1079—MILK IN THE IOWA MARKETING AREA

36. In § 1079.50(b), the introductory text is revised to read as follows:

§ 1079.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1079.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

37. Section 1079.53 is revised to read as follows:

§ 1079.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1079.50(b).

PART 1093—MILK IN THE ALABAMA-WEST FLORIDA MARKETING AREA

38. In § 1093.50(b), the introductory text is revised to read as follows:

§ 1093.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1093.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

39. Section 1093.53 is revised to read as follows:

§ 1093.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1093.50(b).

PART 1094—MILK IN THE NEW ORLEANS-MISSISSIPPI MARKETING AREA

40. In § 1094.50(b), the introductory text is revised to read as follows:

§ 1094.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1094.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this

section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

41. Section 1094.53 is revised to read as follows:

§ 1094.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1094.50(b).

PART 1096—MILK IN THE GREATER LOUISIANA MARKETING AREA

42. In § 1096.50(b), the introductory text is revised to read as follows:

§ 1096.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1096.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

43. Section 1096.53 is revised to read as follows:

§ 1096.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1096.50(b).

PART 1097—MILK IN THE MEMPHIS, TENNESSEE MARKETING AREA

44. In § 1097.50(b), the introductory text is revised to read as follows:

§ 1097.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1097.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

45. Section 1097.53 is revised to read as follows:

§ 1097.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1097.50(b).

PART 1098—MILK IN THE NASHVILLE, TENNESSEE MARKETING AREA

46. In § 1098.50(b), the introductory text is revised to read as follows:

§ 1098.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1098.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

47. Section 1098.53 is revised to read as follows:

§ 1098.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1098.50(b).

PART 1099—MILK IN THE PADUCAH, KENTUCKY MARKETING AREA

48. In § 1099.50(b), the introductory text is revised to read as follows:

§ 1099.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1099.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

49. Section 1099.53 is revised to read as follows:

§ 1099.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1099.50(b).

PART 1106—MILK IN THE SOUTHWEST PLAINS MARKETING AREA

50. In § 1106.50(b), the introductory text is revised to read as follows:

§ 1106.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1106.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2)

of this section, was less than the Class III price for the second preceding month.
* * * * *

51. Section 1106.53 is revised to read as follows:

1106.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1106.50(b).

PART 1108—MILK IN THE CENTRAL ARKANSAS MARKETING AREA

52. In § 1108.50(b), the introductory text is revised to read as follows:

§ 1108.50 Class prices.
* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1108.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.
* * * * *

53. Section 1108.53 is revised to read as follows:

§ 1108.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1108.50(b).

PART 1120—MILK IN THE LUBBOCK-PLAINVIEW, TEXAS MARKETING AREA

54. In § 1120.50(b), the introductory text is revised to read as follows:

§ 1120.50 Class prices.
* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1120.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.
* * * * *

55. Section 1120.53 is revised to read as follows:

§ 1120.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1120.50(b).

PART 1124—MILK IN THE PACIFIC NORTHWEST MARKETING AREA

56. In § 1124.50(b), the introductory text is revised to read as follows:

§ 1124.50 Class prices.
* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1124.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.
* * * * *

57. Section 1124.53 is revised to read as follows:

§ 1124.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1124.50(b).

PART 1126—MILK IN THE TEXAS MARKETING AREA

58. In § 1126.50(b), the introductory text is revised to read as follows:

§ 1126.50 Class prices.
* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1126.51(a) for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.
* * * * *

59. Section 1126.53 is revised to read as follows:

§ 1126.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1126.50(b).

PART 1131—MILK IN THE CENTRAL ARIZONA MARKETING AREA

60. In § 1131.50(b), the introductory text is revised to read as follows:

§ 1131.50 Class prices.
* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1131.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.
* * * * *

61. Section 1131.53 is revised to read as follows:

§ 1131.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1131.50(b).

PART 1132—MILK IN THE TEXAS PANHANDLE MARKETING AREA

62. In § 1132.50(b), the introductory text is revised to read as follows:

§ 1132.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1132.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

63. Section 1132.53 is revised to read as follows:

§ 1132.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1132.50(b).

PART 1134—MILK IN THE WESTERN COLORADO MARKETING AREA

64. In § 1134.50(b), the introductory text is revised to read as follows:

§ 1134.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1134.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

65. Section 1134.53 is revised to read as follows:

§ 1134.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1134.50(b).

PART 1135—MILK IN THE SOUTHWESTERN IDAHO-EASTERN OREGON MARKETING AREA

66. In § 1135.50(b), the introductory text is revised to read as follows:

§ 1135.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1135.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

67. Section 1135.53 is revised to read as follows:

§ 1135.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1135.50(b).

PART 1137—MILK IN THE EASTERN COLORADO MARKETING AREA

68. In § 1137.50(b), the introductory text is revised to read as follows:

§ 1137.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1137.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

69. Section 1137.53 is revised to read as follows:

§ 1137.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1137.50(b).

PART 1138—MILK IN THE RIO GRANDE VALLEY MARKETING AREA

70. In § 1138.50(b), the introductory text is revised to read as follows:

§ 1138.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1138.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

71. § 1138.53 is revised to read as follows:

§ 1138.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the

Class II price for the following month computed pursuant to § 1138.50(b).

PART 1139—MILK IN THE GREAT BASIN MARKETING AREA

72. In § 1139.50(b), the introductory text is revised to read as follows:

§ 1139.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1139.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

* * * * *

73. § 1139.53 is revised to read as follows:

§ 1139.53 Announcement of class and component prices.

The market administrator shall announce on or before:

(a) The 5th day of each month, the Class I price for the following month;

(b) The 15th day of each month, the Class II price for the following month computed pursuant to § 1139.50(b); and

(c) The 5th day after the end of each month, the Class III price and the prices for butterfat, milk protein and skim milk computed pursuant to § 1139.50 (d), (e) and (f) for each month.

Marketing Agreement Regulating the Handling of Milk in Certain Marketing Areas

The parties hereto, in order to effectuate the declared policy of the Act, and in accordance with the rules of practice and procedure effective thereunder (7 CFR part 900), desire to enter into this marketing agreement and do hereby agree that the provisions referred to in paragraph I hereof as augmented by the provisions specified in paragraph II hereof, shall be and are the provisions of this marketing agreement as if set out in full herein.

I. The findings and determinations, order relative to handling, and the provisions of §§ [1] to , all inclusive, of the order regulating the handling of milk in the (name of order) marketing area (7 CFR part [2]) which is annexed hereto; and

II. The following provisions:

§ [3] Record of milk handled and authorization to correct typographical errors.

(a) Record of milk handled. The undersigned certifies that he handled during the month of , hundredweight of milk covered by this marketing agreement.

(b) Authorization to correct typographical errors. The undersigned hereby authorizes the Director, or Acting Director, Dairy Division, Agricultural Marketing Service, to correct any typographical errors which may have been made in this marketing agreement.

§ [3] Effective date. This marketing agreement shall become effective upon the execution of a counterpart hereof by the Secretary in accordance with § 900.14(a) of the aforesaid rules of practice and procedure.

In Witness Whereof, The contracting handlers, acting under the provisions of the Act, for the purposes and subject to the limitations herein contained and not otherwise, have hereunto set their respective hands and seals.

Signature _____

(Seal)

By

Name _____

Title _____

Address _____

Attest _____

Date _____

[FR Doc. 90-7150 Filed 3-28-90; 8:45 am]

BILLING CODE 3410-02-M

[1] First and last sections of order

[2] Appropriate part number

[3] Next consecutive section number

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 704 and 741

Corporate Credit Unions; Amendments

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed revisions to regulation.

SUMMARY: The NCUA Board (Board) is proposing to revise part 704 (Corporate Credit Unions) of its Rules and Regulations. The proposal results from NCUA's policy to periodically review each of its regulations. The proposed changes are:

a. Revise § 704.1 to make new § 704.8 applicable to both corporate Federal credit unions and federally insured state-chartered corporate credit unions;

b. Revise § 704.2 to apply § 704.8 to federally insured state-chartered corporate credit unions and to include necessary additional definitions;

c. Add new § 704.8 to the regulation. This section addresses the threshold that will trigger the need for NCUA approval of an investment in fixed assets; and

d. Add new § 741.6 to extend the applicability of the existing regulation § 704.3, Corporate Reserves and new regulation § 704.8, Fixed Assets to federally insured state-chartered corporate credit unions.

DATES: Comments must be received on or before May 29, 1990.

ADDRESSES: Send comments to Becky Baker, Secretary of the Board, National Credit Union Administration, 1776 G Street NW., Suite 600, Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: D. Michael Riley, Director, Office of Examination and Insurance or Linda K. Groth, Corporate Credit Union Specialist, Office of Examination and Insurance, NCUA, at the above address, or telephone: (202) 682-9640.

SUPPLEMENTARY INFORMATION:

Background

Part 704 of the NCUA Rules and Regulations, Corporate Credit Unions, was promulgated in 1977 and revised in 1979, 1984 and 1988. This regulation addresses specific aspects of corporate credit union operational considerations. Investment in fixed assets was not considered in the original regulation, because corporate credit unions had only minor holdings in fixed assets at that time. It was not until later that corporate credit unions began investing in fixed assets. Although major problems have not occurred because of this type of investment, more corporate credit unions are now investing in fixed assets and other investments indirectly associated with fixed assets, i.e., Credit Union Service Organizations (CUSOs), long-term leases, etc. As a result of its review of § 701.36 of the Rules and Regulations, Federal Credit Union Ownership of Fixed Assets, the Board has determined that the limitation on investment in fixed assets for natural person credit unions is inappropriate for corporate credit unions. (See 54 FR 18466, 5/1/1989.) The corporate credit union threshold limitation for investment in fixed assets should be included in part 704 and the limitation should reflect the true nature of a corporate credit union as a pass-through institution for its member credit unions. The Board requests comments on the proposed changes and any other suggested modifications to the regulation. The following analysis describes the proposed changes to the regulation:

Section-by-Section Analysis

Section 704.1—Scope

This section presently states that part 704 applies to corporate Federal credit unions, except for § 704.3—Corporate Reserve, which applies to federally insured state-chartered corporate credit unions as well. The Board proposes to amend § 704.1 in order to make new § 704.8 applicable to both federally insured state-chartered corporate credit unions and federally chartered corporate credit unions.

The purpose of a corporate credit union and its attendant risks are not affected by the type of charter (Federal or State). The risks associated with investments in fixed assets transcend the issue of charter and, as such, it is the Board's intent to apply the threshold limitation to both federally insured state-chartered corporate credit unions and corporate Federal credit unions.

Section 704.2—Definitions

This section presently defines when a federally insured state-chartered credit union is deemed a federally insured state-chartered corporate credit union for purposes of § 704.3, Corporate Reserve. The Board proposes to amend § 704.2 to apply the definition of a federally insured state-chartered corporate credit union to new § 704.8.

For purposes of § 704.8, the term "total reserves" means all forms of retained earnings and corporate reserves (regular or statutory reserves, as applicable) except for valuation allowances established to meet full and fair disclosure requirements of § 702.3 (e.g., Investment Valuation Reserve, Allowance for Loan Losses and Allowance for Investment Losses). It would be inconsistent to consider these funds, previously earmarked for losses by credit union management, as uncommitted reserves.

For purposes of § 704.8, fixed assets are the same as defined in § 701.36(b)(1)–(3) and investment in fixed assets is the same as defined in § 701.36(b)(4). This definition includes any investment in real property used or held for use as premises; any leasehold improvement on premises; any investment in furniture, fixtures, and equipment; the aggregate of all capital and operating lease payments pursuant to lease agreements for fixed assets; and any investments in CUSOs as described in § 701.27, holding fixed assets used by, for the purposes of this regulation, the corporate credit union and loans to such organizations.

Section 704.3 through 704.7

There are no recommended changes to these sections of the regulation. These sections remain as promulgated in October 1988. (See 53 FR 42942, 10/25/1988.)

Section 704.8 Fixed Assets

Section 701.36 establishes a threshold limitation on investment in fixed assets for all Federal credit unions at 5 percent of shares and retained earnings. The comments received in response to the NCUA review of § 701.36 of the Rules and Regulations (see 54 FR 18466, 5/1/1989) clearly indicated a need to review the limitation on the amount of funds that a corporate credit union can invest in fixed assets without NCUA approval. The majority of the commenters indicated that the use of shares and retained earnings, as set forth in § 701.36 for all Federal credit unions, was inappropriate for corporate credit unions. Including shares in the base for calculating the limit on investment in fixed assets for corporate credit unions is undesirable in that: (1) This creates an unreasonably high ceiling for such investments; and (2) the share base of corporate credit unions is relatively unstable, reflecting the liquidity needs of member credit unions. Accordingly, most commenters recommended the use of a more stable base (e.g., reserves) for this calculation.

The Board does not believe that the 5 percent of shares and retained earnings limitation is appropriate for corporate credit unions. Corporate credit unions were established to serve as a liquidity reservoir for their natural person member credit unions. As such, there is a constant ebb and flow of funds within the various corporate credit union share accounts. The recognized volatility of the corporate credit union's share base does not provide a stable base for calculation of the fixed asset threshold limitation given the long-term nature of fixed asset commitments. Further, corporate credit unions operate with a very narrow margin through careful control of the matching between assets and liabilities, both in rates and maturities. Accordingly, nonincome producing assets (e.g., fixed assets) must be matched against no-cost liabilities (e.g., reserves) in order to maintain this matching philosophy.

The Board is proposing to establish the threshold limitation for seeking regulatory approval for investment in fixed assets by corporate credit unions at 10 percent of reserves. Reserves of corporate credit unions are relatively stable, and further, it is appropriate to use reserves as a base since they represent no-cost liabilities which are matched against nonincome producing (fixed) assets. This threshold limitation will serve only as a trigger for requiring NCUA approval of investment in fixed assets exceeding the limit.

The regional director or state supervisory authority with concurrence of the regional director, as appropriate, will have the flexibility to approve a limit sufficient to accommodate future reasonable acquisitions of fixed assets without the need for reapplication by the corporate credit union. Once such a limit has been approved, a corporate credit union may make future acquisitions of fixed assets, provided the aggregate of all such future investments in fixed assets does not exceed the established limit.

Given the purpose of a corporate credit union to serve its member credit unions and to provide them the greatest reasonable return possible, a large investment in fixed assets may be inconsistent with the stated purpose. The financial impact of the investment in fixed assets should always be considered by a corporate credit union relative to its matching of rates and maturities of assets and liabilities, as well as the earnings and capital position before such an investment is made.

Corporate Federal credit unions shall submit their requests for approval of investment in fixed assets above the 10 percent limitation to the NCUA regional office having jurisdiction over the geographical area in which the credit union is located. The regional office shall inform the requesting corporate Federal credit union, in writing, of the date the request was received. If the corporate Federal credit union does not receive notification of the action taken on its request within 45 calendar days of the date the request was received by the regional office, the corporate Federal credit union may proceed with its proposed investment in fixed assets.

Federally insured state-chartered corporate credit unions must follow state law. State statutory or regulatory provisions may include similar authority to the state supervisory authority for approving investments in fixed assets to corporate credit unions. Where state law is silent or allows for a higher threshold limit, § 704.8 is applicable for federally insured state-chartered corporate credit unions. NCUA concurrence is required for approval of such waivers.

Where state law is more restrictive for investment in fixed assets, federally insured state-chartered corporate credit unions must follow state law provisions. However, if the federally insured state-

chartered corporate credit union requests a waiver above the limitation established in § 704.8, the concurrence of the NCUA regional director is also required. Requests by federally insured state-chartered corporate credit unions for a waiver from the threshold limitation must be submitted in accordance with the provisions of state law. Further, NCUA concurrence is required for approvals of such waivers prior to the corporate credit union investing in fixed assets in amounts exceeding the threshold limit. A new § 741.6 is added setting forth these requirements. New § 741.6 also sets forth the requirement that federally insured state-chartered corporate credit unions must comply with corporate reserve requirements described in § 704.3. This is merely a clarifying amendment rather than a change.

The Board recognizes that the existing level of fixed assets of some corporate credit unions may currently exceed the threshold limit of the proposed amendment to the regulation. The purpose of this regulation is not to impose regulatory restriction on corporate credit unions for their current investments in fixed assets that were made in good faith; therefore, those corporate credit unions which exceed the proposed limitation as of the effective date of the final regulation need not apply for a waiver. Such corporate credit unions, however, must submit a business plan and request a reasonable limit to allow for future investments in fixed assets.

Regulatory Procedures

Regulatory Flexibility Act

The Board certifies that the proposed rule, if made final, will not have a significant impact on a substantial number of small credit unions because the rule applies only to the federally insured corporate credit unions, which number 30 nationally. All corporate credit unions have assets in excess of $1 million. Accordingly, the Board has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

This proposed rule makes no changes to collection requirements, therefore, it need not be sent to the Office of Management and Budget for approval.

Executive Order 12612

The Board is seeking comments concerning the applicability of the proposed § 704.8, Fixed Assets, to federally insured state-chartered corporate credit unions. As a result of these comments and subsequent analysis, the Board proposes to apply this threshold requirement on federally insured state-chartered corporate credit unions as a condition of National Credit Union Share Insurance Fund (NCUSIF) coverage. This proposed rule does not impose additional costs or burdens on the states, nor does it affect the state's ability to discharge traditional state government functions. The benefits provided and protection afforded by the NCUSIF are the same for federally insured state-chartered corporate credit unions as for federally chartered corporate credit unions. It is protection afforded through a federal system. The responsibility for administering that system lies with the NCUA Board. The Board believes that all federally insured corporate credit unions should be subject to the same fixed asset requirements.

List of Subjects

12 CFR Part 704

Corporate credit unions.

12 CFR Part 741

Requirements for insurance.

By the National Credit Union Administration Board on March 20, 1990.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA proposes to amend its regulation as follows:

PART 704—[AMENDED]

1. The authority citation for part 704 continues to read as follows:

Authority: 12 U.S.C. 1762, 1766(a), 1781 and 1789.

2. Section 704.1 is revised to read as follows:

§ 704.1 Scope.

This part establishes certain special rules applying to corporate Federal credit unions and grants certain additional authorities to such credit unions. Section 704.3—Corporate Reserve and § 704.8—Fixed Assets have applicability to both corporate Federal credit unions and federally insured state-chartered corporate credit unions.

3. Section 704.2 is amended by revising paragraph (b) and adding new paragraphs (e) and (f) to read as follows:

§ 704.2 Definitions.

* * * * *

(b) For the purposes of §§ 704.3 and 704.8, a federally insured state-chartered credit union shall be deemed a federally insured state-chartered corporate credit union when its total dollar amount of outstanding loans to member credit unions plus shares and deposits issued to member credit unions equals or exceeds 75 per centum of its total outstanding loans plus shares and deposits.

* * * * *

(e) For purposes of § 704.8 only, "total reserves" means all forms of undivided earnings and corporate reserves (or regular reserves or statutory reserves, as applicable) except for valuation allowances for loans and investments and other allowances established to meet full and fair disclosure requirements of § 702.3.

(f) For purposes of § 704.8, fixed assets is the same as defined in § 701.36(b)(1)–(3) and investment in fixed assets is the same as defined in § 701.36(b)(4).

4. New § 704.8 is added to read as follows:

§ 704.8 Fixed assets.

(a) A corporate credit union's ownership in fixed assets shall be limited as described in § 701.36 of the Rules and Regulations except that § 701.36(c)(1)–(4) do not apply to corporate credit unions. Section 704.8 applies to corporate credit unions in lieu of § 701.36(c)(1)–(4).

(b) Investment in Fixed Assets—Corporate Credit Unions.

(1) No corporate credit union, without the prior approval of the Administration, shall invest in the fixed assets if the aggregate of all such investments exceeds 10 percent of total reserves.

(2) A corporate credit union shall submit such statements and reports as the NCUA regional director may require in support of any investment in fixed assets in excess of the limit specified above.

(3) Corporate credit unions shall submit their requests to exceed the limitation of § 704.8(b)(1) to the NCUA regional office having jurisdiction over the geographical area in which the corporate credit union's main office is located. The regional office shall inform the requesting corporate credit union, in writing, of the date the request was received. If the corporate credit union does not receive notification of the action taken on its request within 45 calendar days of the date the request was received by the regional office, the corporate credit union may proceed with its proposed investment in fixed assets.

(4) If the Administration determines that the proposal will not adversely affect the corporate credit union, an aggregate dollar amount or percentage of total reserves will be approved for investment in fixed assets.

NCUA proposes to amend § 741.6 of its regulation as follows:

PART 741—[AMENDED]

1. The authority citation for part 741 continues to read as follows:

Authority: 12 U.S.C. 1757, 1766, 1781 through 1790 and Pub. L. 101-73. Section 741.10 is also authorized by 31 USC 3717.

§§ 741.7-741.12 [Redesignated from §§ 741.6-741.11]

2. Sections 741.6-741.11 are redesignated as sections 741.7-741.12.

3. A new § 741.6 is added as follows:

§ 741.6 Corporate credit unions reserve requirement and fixed asset limitation.

(a) State-chartered corporate credit unions that are federally insured, or that make application for insurance, pursuant to title II of the Act shall adhere to the requirements of § 704.3, Corporate Reserve.

(b) State-chartered corporate credit unions that are federally insured, or that make application for insurance, pursuant to title II of the Act shall adhere to the requirements of § 704.8 regarding investment in fixed assets. All requests by federally insured state-chartered corporate credit unions for a waiver from the 10 percent limitation of § 704.8 will be submitted in accordance with the provisions of State law. Approval of a federally insured state-chartered corporate credit union's request for a waiver to exceed the limitation established in § 704.8 will require concurrence of the NCUA regional director.

[FR Doc. 90-7087 Filed 3-28-90; 8:45 am]

BILLING CODE 7535-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 111, 113, 142, 143, 159

Proposed Customs Regulations Regarding Electronic Entry Filing

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule; correction; extension of comment period.

SUMMARY: A document was published in the **Federal Register** on January 25, 1990 (55 FR 2528), proposing, in pertinent part, to amend the Customs Regulations to provide that immediate delivery/entry and entry summary data on imported merchandise may be filed electronically with Customs through the Automated Broker Interface (ABI) module of the Customs Automated Commercial System (ACS). It would also provide general eligibility criteria for participation in the ABI system. This document corrects a typographical error that appears in that document relating to a proposed amendment to part 111 regarding Customs brokers, and extends the period of time within which interested members of the public may submit comments concerning the proposed rulemaking.

DATES: Comments must be received on or before April 25, 1990.

ADDRESSES: Comments (preferably in triplicate) may be addressed to and inspected at the Regulations and Disclosure Law Branch, U.S. Customs Service, 1301 Constitution Avenue NW., room 2119, Washington, DC 20229. All comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and §103.11(b), Customs Regulations (19 CFR 103.11(b)), between 9:00 a.m. and 4:30 p.m. on normal business days, at the address above.

FOR FURTHER INFORMATION CONTACT: Russell Berger, Regulations and Disclosure Law Branch (202) 566-8237.

SUPPLEMENTARY INFORMATION:

Background

A document published in the **Federal Register** on January 25, 1990 (55 FR 2528) proposed, in pertinent part, to amend the Customs Regulations to provide that immediate delivery/entry and entry summary data on imported merchandise may be filed electronically with Customs through the Automated Broker Interface (ABI) module of the Customs Automated Commercial System (ACS). It would also provide general eligibility criteria for participation in the ABI system. The proposal reflects Customs significant advances in the automation of the entry filing process and its continuing commitment to increase the scope of electronic processing of imported merchandise and to reduce reliance on paper documentation, thereby resulting in lowered costs, increased efficiency and the expedited release of cargo.

Comments on the proposed rulemaking were to have been received on or before March 26, 1990. Customs has, however, received a request from a trade association to extend this period, the association stating that it needs additional time in order to coordinate a responsive comment with its membership. Customs believes, under the circumstances, that the request has merit. Accordingly, the period of time for the submission of comments is being extended as indicated.

Furthermore, a proposed amendment to part 111 concerning Customs brokers as set forth in the document contained a typographical error.

Correction

On page 2530 of the document, the proposed amendment to § 111.22(e) should read as follows:

§ 111.22 Additional record of transactions.

* * * * *

(e) *Authorization.* The regional commissioner for the region where a broker has given notification to maintain records of financial transactions on a centralized system basis, as set forth in §111.23(e), is responsible for providing an exemption or withdrawal of exemption under paragraphs (b) and (c) of this section.

Dated: March 22, 1990.

Carol Hallett,

Commissioner of Customs.

[FR Doc. 90-7160 Filed 3-28-90; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 600

[Docket No. 85N-0506]

RIN 0905-AB53

Adverse Experience Reporting Requirements for Licensed Biological Products

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to require manufacturers of licensed biological products to (1) report promptly to FDA adverse experiences associated with the use of a biological product that are both serious and unexpected, and any significant increase in the frequency of a serious, but expected adverse experience; and (2) report periodically, depending on the length of marketing experience, on all other adverse experiences. FDA is taking this action to provide a mechanism under which manufacturers would inform the agency, on a timely basis, of any unanticipated safety problems with marketed biological products. This action is consistent with similar initiatives taken by FDA regarding new drugs, medical devices, and drugs that are marketed without approved applications.

DATES: Comments by May 29, 1990. FDA proposes that any final rule based on

this proposal become effective 60 days after its date of publication in the **Federal Register**.

ADDRESSES: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857. In addition, any comments pertaining to the information collection requirements found in § 600.80(c) of this proposed rule should be filed with the Dockets Management Branch and with the Office of Management and Budget (OMB) (see section VIII of this proposal).

FOR FURTHER INFORMATION CONTACT: JoAnn M. Minor, Center for Biologics Evaluation and Research (HFB–130), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892, 301–295–8188.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of April 24, 1979 (44 FR 24233), FDA announced the availability of a draft proposed regulation requiring records and reports of adverse reactions and product experiences involving licensed biological products. There were eight comments on this notice. A major criticism of the 1979 draft was that the requirement for immediate reporting by telephone with a followup written report within 7 days was impractical as it would result in incomplete reports being submitted. Other comments expressed problems with some of the definitions used in the draft, such as "increased frequency," "expected and unexpected experiences," and what constitutes a "serious" experience. As a result of these comments and a reevaluation of the type of adverse experience information needed by the agency, this proposal differs substantially from the 1979 proposal. As revised, the provisions of this proposed rule are similar to the adverse experience reporting requirements for new drugs published in the **Federal Register** of February 22, 1985 (50 FR 7452) as revised in the **Federal Register** of July 3, 1986 (51 FR 24476). In addition, this proposal would adopt revisions to the adverse experience reporting requirements for new drugs published in the **Federal Register** of October 13, 1987 (52 FR 37931) (21 CFR 314.80). It should be noted that the agency regards the terms "adverse experience," "adverse event," "adverse effect," and "adverse reaction" to be equivalent and interchangeable.

Section 351 of the Public Health Service Act (PHS Act) requires that to be licensed for marketing, a biological product must be shown to be safe, pure, and potent (42 U.S.C. 262). The standards for meeting the statutory criteria for biological product licensure are set forth in 21 CFR parts 600 through 680. The Commissioner of Food and Drugs may revoke a product license if the biological product fails to conform to the standards established in the license and in the regulations designed to ensure the continued safety, purity, and potency of the product (21 CFR 601.5(b)(4)).

Biological products, subject to regulation under section 351 of the PHS Act, are also drugs or devices, within the meaning of section 201(g)(1) or 201(h) of the Federal Food, Drug, and Cosmetic Act (FDC Act) (21 U.S.C. 321(g)(1) or 321(h)). Therefore, such products are subject to the misbranding provisions of section 502 of the act (21 U.S.C. 352) as well as the false labeling provisions of section 351(b) of the PHS Act. A biological product whose label purports, represents, or suggests it to be effective and safe for certain intended uses, and which is not safe and effective for such uses, is falsely labeled and misbranded.

II. Need for Federal Regulation To Require Reporting of Adverse Experiences for Biological Products

FDA is the Federal agency charged with the responsibility for determining that a biological product meets the statutory standards for initial and continued licensure. To carry out its responsibilities, the agency needs to be informed whenever a manufacturer of a licensed biologlcal product receives or otherwise becomes aware of information about adverse experiences associated with the use of its product. Only if FDA is provided with such information will it be able to evaluate the risk, if any, associated with a biological product and take whatever action is necessary to reduce or eliminate the public's exposure to this risk.

FDA's biologics regulations do not specifically require that reports of adverse experiences associated with the use of all licensed biological products be submitted to the agency, except reports of fatalities resulting from blood collection or transfusion (21 CFR 606.170). Despite the lack of specific reporting requirements, manufacturers voluntarily submit adverse biologic experience reports to FDA. The reports are usually based on information voluntarily provided to the manufacturers by physicians. FDA also receives reports from consumers both directly and through other government reporting systems, including the Drug Product Problem Reporting Program and the Government Wide Quality Assurance Program.

In addition, FDA maintains frequent communication and information exchange with the Centers for Disease Control (CDC) on adverse experience reports received through CDC's surveillance programs. These include the Monitoring System for Adverse Events Following Immunization, which receives reports from providers administering about one-half of the total doses of vaccines given in the United States, and a system for coordinating experience reports on hepatitis B vaccine. Through these reporting systems FDA has been able to monitor general safety trends for biological products. However, the reports received through these systems have varied in quality, completeness, timeliness, and format, resulting in limitations on the usefulness of the received data.

The other half of the total doses of vaccines given in the United States is administered through private practices. The National Childhood Vaccine Injury Act of 1986 (NCVIA) required for the first time the reporting of specified serious adverse events associated with certain childhood vaccines (section 2125 of the PHS Act (42 U.S.C. 300aa–25)) (See 53 FR 10565; April 1, 1988). These reports are required from manufacturers and health care providers, who administer such vaccines through private or public funds. At present, health care providers administering vaccines purchased with private funds report to FDA, while those administering vaccines purchased with public funds report to CDC through local county or state health departments. These two systems will be merged into one reporting system jointly managed by FDA and CDC. When a manufacturer is informed of an adverse event required to be reported under NCVIA, the manufacturer must report the event to FDA.

Manufacturers of the vaccines specified in the NCVIA would also be required to report adverse events associated with those vaccines in accordance with the regulations being proposed in this notice. They would not be required, however, to submit duplicate reports—the same report of an event would satisfy the manufacturer's obligations under both NCVIA and the proposed regulations. Because NCVIA does not specify the time periods for submission of reports, the time periods set forth in this proposal would apply to manufacturers submitting reports also required under NCVIA.

Biological products are also drugs or devices and as such are required to be

manufactured in accordance with current good manufacturing practice (CGMP). Drug and device manufacturers are required by CGMP regulations to establish and maintain a complaint file (21 CFR 211.198, 820.198) and to provide access to, and copying of, the complaint file by authorized FDA representatives (21 CFR 211.180(c), 820.180). Sections 211.198 and 820.198 do not require a report or other information about a complaint to be transmitted to FDA. Consequently, a significant period of time may pass before FDA becomes aware of an adverse experience associated with a product.

In order to provide FDA with the information it needs to monitor effectively the safety of all licensed biological products, FDA proposes to require that all manufacturers of these products submit to FDA (1) Alert reports within 15 working days of receipt of adverse experiences associated with the use of a licensed biological product that are both "serious and unexpected," and any "significant increase in frequency" of an adverse experience that is both "serious and expected;" and (2) periodic reports of all adverse experiences, including both serious and nonserious adverse experiences, that are not included in a 15-day Alert report.

This action is consistent with other agency initiatives regarding adverse experience reporting for drugs and medical devices. Current regulations under § 314.80 (21 CFR 314.80) require the reporting to FDA of adverse drug experiences with drug products having approved applications. These regulations require all "serious and unexpected" adverse drug experiences and any "significant increase in frequency" of a serious, expected event to be reported to FDA within 15 working days. All other adverse drug experiences are required to be reported to FDA at quarterly or annual intervals depending on the length of marketing experience with the drug product.

In the **Federal Register** of July 3, 1986 (51 FR 24476), FDA published a final rule requiring manufacturers, packers, and distributors of marketed prescription drug products without approved applications to submit to FDA reports of certain serious adverse experiences associated with the use of these products. These reporting requirements are similar to the 15-day Alert report requirements for approved drug products in § 314.80. This regulatory action was taken because of events whereby serious adverse experiences, which were associated with an unapproved intravenous vitamin E drug product, were not reported, and were not required to be reported, to FDA.

In the **Federal Register** of September 14, 1984 (49 FR 36326), FDA issued a final rule requiring a device manufacturer or importer to report to FDA whenever the manufacturer or importer receives or otherwise becomes aware of information that reasonably suggests that one of its marketed devices (1) may have caused or contributed to a death or serious injury or (2) has malfunctioned and that the device or any other device marketed by the manufacturer or importer would be likely to cause or contribute to a death or serious injury if the malfunction were to recur (21 CFR 803.24(a)).

The agency believes that in order to protect the public health, it is also necessary to require the reporting to FDA of important adverse experience information associated with the use of licensed biological products. As stated above, the provisions of this proposed rule are similar to the reporting requirements for approved drug products set forth in § 314.80.

It has been agency policy that a report of adverse experiences submitted by a licensed manufacturer (and any release by FDA of that report or information) does not necessarily reflect a conclusion by FDA or the person submitting the report or information that the report or information constitutes an admission that the drug caused or contributed to an adverse effect. This policy has been included in the agency's new drug regulations in § 314.80(l). To be consistent with the new drug regulations, a similar disclaimer is added to this proposed regulation under new § 600.80(m) (21 CFR 600.80(m)).

Elsewhere in this issue of the **Federal Register** the agency is announcing the availability of a draft guideline to assist manufacturers in reporting adverse experiences with licensed biological products. FDA is making the draft guideline available for public comment to assist the agency in developing a final guideline.

III. Statutory Authority

Authority for promulgating these proposed regulations is provided by various sections of the PHS Act and the FDC Act. Under section 351 of the PHS Act, biological products must be licensed before they can be marketed in interstate commerce. Before licensing, biological products must be shown to be safe, pure, and potent. The PHS Act provides that biologics licenses "shall be issued, suspended, and revoked as prescribed by regulations * * *" (42 U.S.C. 262(d)). FDA's regulations governing license revocation provide that the Commissioner shall give notice of intention to revoke a license if the Commissioner concludes that the licensed product is not safe and effective for all of its intended uses or is misbranded with respect to any such use (see § 601.5(b)(6)).

All biological products are subject to the misbranding provisions of section 502 of the FDC Act and the false labeling provisions of section 351(b) of the PHS Act. Under section 502(a) of the FDC Act, a drug or device (and, therefore, a biological product) is misbranded if its labeling is false or misleading. A biological product is also misbranded if it fails to bear adequate warnings under section 502(f)(2) of the FDC Act or if it is dangerous to health when used as directed in its labeling under section 502(j) of the FDC Act. Section 351(b) of the PHS Act prohibits false labeling of biological products. Information made available to FDA through the adverse experience reports contemplated in this proposed rule may establish that a biological product is not safe or not properly labeled and that the license should be revoked. Failure to comply with the proposed regulations would itself be grounds for revocation of a product license under § 601.5. In addition, as discussed above, section 2125 of the PHS Act (42 U.S.C. 300aa-25) requires manufacturers to report specified adverse events associated with certain vaccines.

Section 701(a) of the FDC Act (21 U.S.C. 371(a)) authorizes FDA to promulgate regulations for the efficient enforcement of the act. *Weinberger* v. *Hynson, Westcott & Dunning, Inc.*, 412 U.S. 609 (1973). See also *National Association of Pharmaceutical Mfrs.* v. *FDA*, 637 F.2d 877 (2d Cir. 1981); *National Confectioners Ass'n* v. *Califano*, 569 F.2d 690 (DC Cir. 1978). The information from adverse experience reports on biological products may justify FDA's dissemination of public information under section 705 of the FDC Act (21 U.S.C. 375) and section 2125(c) of the PHS Act. The submission of the required reports will also enable FDA to determine at the earliest possible time whether to request a manufacturer to recall a product from the market or to order recall under section 351(d)(2) of the PHS Act (42 U.S.C. 262(d)(2)) or to recommend seizure or injunction action under section 304 or 302 of the FDC Act (21 U.S.C. 334, 332) to halt the marketing of the product and to remove it from the market. Such action, initiated promptly, may avert further adverse effects that may be associated with the use of the product.

IV. Provisions of the Regulations

A. Definitions

Section 600.80(a) of the proposed rule sets forth definitions applicable to the reporting requirements. The term "adverse experience" means any adverse event associated with the use of a biological product in humans, whether or not considered product related, including an adverse event occurring in the course of the use of a product in professional practice, an adverse event occurring from overdose, abuse, or withdrawal, and any significant failure of expected pharmacological action.

The term "increased frequency" means an increase in the rate of occurrence of a particular adverse biological product experience, e.g., an increased number of reports of a particular adverse experience after appropriate adjustment for biological product exposure. In contrast to the definition for "unexpected," the definition for "increased frequency" is necessarily based on analysis of a series of previous adverse experience reports, rather than a single report. FDA will describe in a guideline the factors which would make an increased frequency "significant" so as to trigger the 15-day Alert reporting requirement, including an increased "rate of occurrence" of the adverse experience based on some measure of use of the product.

The term "serious" means an adverse biological product experience that is fatal or life-threatening, is permanently disabling, requires inpatient hospitalization, or is a congenital anomaly, or cancer.

The term "unexpected" means an adverse experience that is not listed in the current labeling for the biological product and includes an event that may be symptomatically and pathophysiologically related to an event listed in the labeling, but differs from the event because of greater severity or specificity. For example, under this definition, hepatic necrosis would be unexpected (by virtue of greater severity) if the labeling only referred to elevated hepatic enzymes or hepatitis. Similarly, convulsions would be unexpected (by virtue of greater specificity) if the labeling listed only neurological abnormalities.

B. Who Must Report

Under the proposal, all manufacturers having a biological product license under § 601.20 would be required to establish and maintain records and make reports to FDA of serious and unexpected adverse experiences associated with the use of a biological product within 15 working days and of all other adverse experiences periodically depending on the length of marketing experience. In meeting this requirement, each manufacturer would be required to promptly review all adverse experience information about its product obtained or otherwise received by the manufacturer from any source, foreign or domestic, including information derived from commercial marketing experience, postmarketing clinical investigations, postmarketing studies, reports in the scientific literature, and unpublished scientific papers.

FDA is proposing to exempt manufacturers of licensed in vitro diagnostic products and whole blood and its components from these reporting requirements. This is because manufacturers of blood and blood components are required to maintain records and make reports about adverse experiences in accordance with § 606.170 (21 CFR 606.170). In vitro diagnostic products that are biological products subject to section 351 of the PHS Act are in vitro diagnostic reagents that do not involve exposure to human subjects in their use. Although exempted from these adverse experience reporting requirements, manufacturers of licensed in vitro diagnostic products are not exempt from the reporting of errors or accidents in the manufacture of such products that may affect their safety, purity, or potency under the provisions of § 600.14.

C. What and When to Report

1. *Fifteen-day Alert reports.* Under the proposal, FDA would require all adverse experiences that are both "serious" and "unexpected," and any "significant increase in frequency" of an adverse experience that is both "serious" and "expected," to be reported as soon as possible, but in any case within 15 working days. These are the adverse experiences most likely to reveal serious safety problems that were not revealed during the clinical trials and which, therefore, are likely to necessitate a labeling change or other action to protect the public health. Manufacturers should submit these reports within the specified time period even if they have not obtained complete information about the adverse experience. Complete information should be included in a followup report.

Under this proposed rule, FDA would require manufacturers to investigate promptly all "serious and unexpected" adverse experiences and submit followup reports within 15 working days of the receipt of new information or as requested by FDA. If the manufacturer seeks, but cannot obtain, additional information about an adverse experience, a followup report should be prepared that briefly describes the steps taken to obtain the information and the reason the information is unobtainable. This report should be kept in the manufacturer's files but not submitted as a followup to FDA unless so requested.

In order to meet the reporting requirement about any "significant" increase in frequency, manufacturers would be required to review periodically the frequency of reports of "serious" adverse experiences that are "expected." The proposed rule would require manufacturers to conduct this periodic review at least as often as the periodic reporting cycle, and FDA would provide written notice to manufacturers when the agency believes that circumstances warrant more frequent periodic review, e.g., where previous reports signal possible safety problems with the biological product. The proposal would require manufacturers to report to FDA any significant increase in frequency of a serious, expected adverse experience as soon as possible but in any case within 15 working days of determining that a significant increase in frequency exists. If a manufacturer receives a large number of reports within a short period of time, so that a significant increase in frequency is readily apparent, a 15-day Alert report would be required at that juncture.

2. *Periodic reports.* For all other adverse experiences, FDA proposes periodic reporting at quarterly intervals for the first 3 years following licensure of the product, and at annual intervals thereafter. The agency's experience is that the most important safety problems with a biological product are usually discovered during the first 3 years of marketing. The proposal would also provide that FDA may extend quarterly reporting requirements beyond 3 years (when warranted by adverse experiences received to date), may reestablish the quarterly reporting requirements at a later point in time, or may require the manufacturer to submit reports at other specified intervals. Thus, the proposal would provide for increased surveillance of biological products when the circumstances so warrant.

The proposal would require quarterly reports within 30 days of the close of the quarter, the first quarter beginning on the date of issuance of the product license, and annual reports within 60 days of the anniversary date of issuance of the product license. Any followup information for adverse experiences

submitted as part of a periodic report may be submitted with the next periodic report.

FDA also proposes to require that manufacturers include in periodic reports information about the quantity of a biological product distributed under a product license. This information will enable FDA to estimate more accurately the incidence of a biological product's adverse effects.

3. *Published literature.* The proposed regulations would limit literature reporting to "serious and unexpected" adverse experiences and any "significant increase in frequency" of a serious, expected adverse experience, i.e., those experiences subject to the 15-day Alert reporting requirement. By focusing the literature review and reporting on the most important adverse experiences, this proposed requirement would achieve the objectives of a signaling system while maintaining a reasonable reporting burden on manufacturers. Reporting of a large number of individual cases of known or nonserious adverse experiences recorded in the literature would not materially advance public health protection.

The agency also proposes to limit the kind of literature reports subject to the 15-day Alert requirement. With respect to reporting "serious and unexpected" adverse experiences, the proposal would limit literature reporting to adverse experiences appearing in scientific and medical journals as "case reports" or as the result of a formal clinical trial. Form FDA–1639 would be required for each case report, even when a journal may contain less than all items of information needed to complete the form. With respect to reporting a "significant increase in frequency," the proposal would limit literature reporting to scientific and medical journals containing reports of formal clinical trials, or epidemiologic studies or analysis of experience in a monitored series of patients. This limitation also is intended to focus attention on those types of literature reports most likely to yield useful information.

4. *Postmarketing studies.* The agency recognizes that reports occurring in a structured study must be evaluated separately from spontaneous reports. Thus, FDA asks that reports of adverse experiences clearly note that an experience occurred in a postmarketing study. The 15-day Alert reporting requirement would apply to these studies only if there is no blinding or if the blinding code is otherwise broken. Adverse reactions would usually be determined during the study and reports would be required to be submitted on Form FDA–1639. A narrative report is required in the event that a significant increase in frequency of adverse experiences is determined. Under this proposed rule, adverse experiences from these studies not subject to 15-day Alert reporting would not be subject to periodic reporting.

5. *Multiple reports.* Proposed § 600.80(g) contains a caution against the submission of multiple reports for the same adverse experience. Thus, a manufacturer should not include in reports under this proposed section any adverse experiences that occurred in clinical trials if they were previously submitted as part of the product license application. If a report refers to more than one licensed biological product marketed by a manufacturer, the manufacturer should submit a single report to the product license application for the product listed first in the report. As discussed above, an adverse event that is required to be reported under NCVIA and under these proposed regulations should be submitted as a single report. The timing of the reports should be in accordance with these proposed regulations governing reports on all licensed biological products.

D. How to Report

Except as specifically noted below, FDA proposes that all adverse experience reports be submitted on Form FDA–1639. The agency intends to maintain a guideline on meeting the proposed reporting requirements. An alternative form for reporting vaccine adverse experiences is being developed. When this form is approved the regulations and the guideline will be revised accordingly. Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of, and inviting comments on, a draft of such a guideline. The proposal, however, would permit a manufacturer to submit computer-generated reports or to use other formats, subject to the approval of FDA's Division of Epidemiology and Surveillance (HFD–730). Manufacturers would be required to submit two copies of each adverse experience report. Manufacturers should send the adverse experience reports to: Food and Drug Administration, Central Document Room, Park Bldg., Rm. 214, 12420 Parklawn Dr., Rockville, MD 20852.

The proposal urges manufacturers not to include names and addresses of individual patients in adverse experience reports, although other identifiers, such as initials or code numbers, should be included. Initials and codes are useful in eliminating duplicate reports of an adverse experience. Names of patients, individual reporters, health care practitioners, hospitals, and any geographic identifiers are not releasable to the public under FDA's public information regulations in part 20 (21 CFR Part 20).

1. *Fifteen-day Alert reports.* The agency proposes to require reports of "serious and unexpected" adverse experiences to be submitted on Form FDA–1639 because that form is designed to contain information on individual adverse experiences. In contrast, FDA proposes that reports of significant increase in frequency be submitted in narrative form, including the time period on which the increased frequency is based, the method of analysis, and the interpretation of results, rather than using Form FDA–1639. This is because Form FDA–1639 is not well suited for reporting a group of adverse experiences. As stated below, however, the proposed requirement for periodic reports is that a Form FDA–1639 for each "serious and expected," as well as "nonserious," adverse experience be included in each periodic report. Finally, in order to facilitate expedited processing by the agency, the proposal would require prominent identification of all 15-day Alert reports.

2. *Periodic reports.* Periodic reports are designed to perform two functions: (a) Reporting to FDA the adverse experiences not previously reported under the 15-day Alert reporting requirement; and (b) presenting an overview of all the safety-related information learned during that quarter or year. Each adverse experience not previously reported in a 15-day Alert report would be required to be submitted in the periodic report on Form FDA–1639. In order to serve the second function, each periodic report would be required to contain a narrative summary and analysis of the information contained in the report; a tabular listing by experience of all adverse experiences reported during the reporting interval in either a 15-day Alert report or a periodic report; and a history of actions taken, if any, since the last report because of adverse experiences, e.g., labeling changes or studies initiated. FDA believes that this safety profile overview will improve the agency's ability to spot biological product safety trends.

E. Recordkeeping

The proposed rule would require that each manufacturer maintain for a period of 10 years records of all adverse experiences known to the manufacturer, including raw data and any correspondence relating to the adverse experiences.

V. Public Comment

Interested persons may, on or before May 29, 1990, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

VI. Economic Assessment

The agency has examined the regulatory impact and regulatory flexibility implications of the proposed rule in accordance with Executive Order 12291 and the Regulatory Flexibility Act (Pub. L. 96-354). Based on the assumptions and the analysis presented in the threshold assessment for this proposed rule (a copy is on file in the Dockets Management Branch), the agency has estimated that the rule as proposed would generate costs that are well below the thresholds that signify a major rule and, thus, the proposed rule does not require a regulatory impact analysis.

As explained in the threshold assessment, FDA estimates that the number of initial 15-day reports of a serious and unexpected adverse experience submitted annually to the agency under the proposed rule will be approximately 500, and the number of followup reports will be approximately 100. FDA also estimates that the number of reports of an Increased frequency will be 5, and the number of periodic reports will be 5,725. Assuming that an average of one to four person hours would be required by a pharmaceutical firm to complete each report, FDA estimates that the total annual costs of complying with the reporting requirements of the proposed rule will be approximately $255,490.

FDA also concludes that the proposed rule would not produce a significant economic impact on a substantial number of small entities and thus does not require a regulatory flexibility analysis. Although small firms comprise a substantial number of the manufacturers of licensed biological products, the economic impact on these small entities would not be large enough to require a regulatory flexibility analysis. Therefore, the agency certifies that the proposal, if adopted, would not have a significant economic impact on a substantial number of small entities.

VII. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VIII. Paperwork Reduction Act of 1980

Section 600.80(c) of this proposed rule contains information collection requirements which are subject to review by OMB under the Paperwork Reduction Act of 1980. The title, description, and respondent description of the information collection are shown below with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Adverse Experience Reporting Requirements for Licensed Biological Products.

Description: FDA is charged with the responsibility for determining that a biological product meets the statutory standards for safety, purity, and potency for initial and continued licensure. To carry out this mandate, the agency needs to be informed whenever a manufacturer of a licensed biological product receives or otherwise becomes aware of information about adverse experiences associated with the use of its product. Only if FDA is provided with such information will it be able to evaluate the risk, if any, associated with a biological product and take whatever action is necessary to reduce or eliminate the public's exposure. FDA's biologics regulations do not specifically require that reports of adverse experiences associated with the use of all licensed biological products be submitted to the agency. FDA is taking this action to provide a mechanism under which manufacturers would inform the agency, on a timely basis, of any unanticipated safety problems with marketed biological products. This action is consistent with similar initiatives taken by FDA regarding new drugs, medical devices, and drugs that are marketed without approved applications.

ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN

Section	Annual number of respondents	Annual frequency	Average burden per response	Annual burden hours	
600.80	81	5,200	Professional	1.30	6,577
(c)			Clerical	2.03	10,554
Total	81	5,200		3.33	17,131

As required by the Paperwork Reduction Act, FDA is submitting to OMB a request that it approve these information collection requirements. Organizations or individuals desiring to submit comments for consideration by OMB on these information collection requirements should address them to FDA's Dockets Management Branch (address above) and to the Office of Information and Regulatory Affairs, OMB, rm. 3003, New Executive Office Bldg., Washington, DC 20503, Attn: Angela Antonelli.

List of Subjects in 21 CFR Part 600

Biologics, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act, it is proposed that 21 CFR part 600 be amended as follows:

PART 600—BIOLOGICAL PRODUCTS: GENERAL

1. The authority citation for 21 CFR part 600 is revised to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 519, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 360i, 371, 374); secs. 215, 351, 352, 353, 361, 2125 of the Public Health Service Act (42 U.S.C. 216, 262, 263, 263a, 264, 300aa-25).

2. A new subpart D consisting of § 600.80 is added to read as follows:

Subpart D—Reporting of Adverse Experiences

§ 600.80 Postmarketing reporting of adverse experiences.

(a) *Definitions.* The following definitions of terms apply to this section:

"Adverse experience" means any adverse event associated with the use of a biological product in humans, whether or not considered product related, including the following: an adverse event occurring in the course of the use of a biological product in professional practice; an adverse event occurring from overdose of the product, whether accidental or intentional; an adverse event occurring from abuse of the product; an adverse event occurring from withdrawal; and any significant failure of expected pharmacological action.

"Increased frequency" means an increase in the rate of occurrence of a particular adverse biological product experience, e.g., an increased number of reports of a particular adverse experience after appropriate adjustment for biological product exposure.

"Serious" means an adverse biological product experience that occurs from overdose of the product or that is fatal or life-threatening, is permanently disabling, requires inpatient hospitalization, or is a congenital anomaly, or cancer.

"Unexpected" means an adverse biological product experience that is not listed in the current labeling for the product and includes an event that may be symptomatically and pathophysiologically related to an event listed in the labeling, but differs from the event because of greater severity or specificity. For example, under this definition, hepatic necrosis would be unexpected (by virtue of greater severity) if the labeling only referred to elevated hepatic enzymes or hepatitis. Similarly, convulsions would be unexpected (by virtue of greater specificity) if the labeling listed only neurologic abnormalities.

(b) *Review of adverse experiences.* Each manufacturer having a product license under § 601.20 of this chapter shall promptly review all adverse experience information pertaining to its product obtained or otherwise received by the manufacturer from any source, foreign or domestic, including information derived from commercial marketing experience, postmarketing clinical investigations, postmarketing epidemiological/surveillance studies, reports in the scientific literature, and unpublished scientific papers.

(c) *Reporting requirements.* The manufacturer shall report to FDA adverse experience information, as described in this section. The manufacturer shall submit two copies of each report described in this section to the Food and Drug Administration, Central Document Room, Park Bldg., Rm. 214, 12420 Parklawn Dr., Rockville, MD 20852.

(1) *Fifteen-day Alert reports.* (i) The manufacturer shall report each adverse experience that is serious and unexpected, regardless of source, as soon as possible but in any case within 15 working days of initial receipt of the information. These reports are required to be submitted on Form FDA–1639 (Adverse Reaction Report). The manufacturer shall promptly investigate all adverse experiences that are the subject of these 15-day Alert reports and shall submit followup reports within 15 working days of receipt of new information or as requested by FDA. If additional information is not obtainable, a followup report should be prepared that describes briefly the steps taken to seek additional information and the reasons why it could not be obtained. This report should be retained by the manufacturer in its files but not submitted as a followup to FDA unless so requested. These 15-day Alert reports and followups to them are required to be submitted under separate cover and may not be included, except for summary or tabular purposes, in a periodic report.

(ii) The manufacturer shall review periodically (at least as often as the periodic reporting cycle) the frequency of reports of adverse experiences that are both serious and expected, regardless of source, and report any significant increase in frequency as soon as possible but in any case within 15 working days of determining that a significant increase in frequency exists. Upon written notice, FDA may require that manufacturers review the frequency of reports of serious, expected adverse experiences at intervals different from the periodic reporting cycle. Reports of a significant increase in frequency are required to be submitted in narrative form (including the time period on which the increased frequency is based, the method of analysis, and the interpretation of the results), rather than using Form FDA–1639. Fifteen-day Alert reports based on increased frequency are required to be submitted under separate cover and may not be included, except for summary purposes, in a periodic report.

(iii) Each report submitted under this paragraph shall bear prominent identification as to its contents, i.e., "15-day Alert report" or "15-day Alert report—followup."

(2) *Periodic adverse experience reports.* (i) The manufacturer shall report each adverse experience not reported under paragraph (c)(1)(i) of this section at quarterly intervals, for 3 years from the date of issuance of the product license, and then at annual intervals. The manufacturer shall submit each quarterly report within 30 days of the close of the quarter (the first quarter beginning on the date of issuance of the product license) and each annual report within 60 days of the anniversary date of issuance of the license. Upon written notice, FDA may extend or reestablish the requirement that a manufacturer submit quarterly reports, or require that the manufacturer submit reports under this section at different times than those stated. Followup information to adverse experiences submitted in a periodic report may be submitted in the next periodic report.

(ii) Each periodic report is required to contain:

(A) A narrative summary and analysis of the information in the report and an analysis of the 15-day Alert reports submitted during the reporting interval (all 15-day Alert reports being appropriately referenced by the manufacturer's patient identification number, adverse experience term(s), and date of submission to FDA);

(B) A Form FDA–1639 (Adverse Reaction Report) for each adverse experience not reported under paragraph (c)(1)(i) of this section;

(C) A tabular listing by experience of all adverse experiences reported during the reporting interval in either a 15-day Alert report or periodic report consisting of a line listing of the applicant's patient identification number, the patient's age and sex, and adverse experience term(s);

(D) A history of actions taken since the last report because of adverse experiences (for example, labeling changes or studies initiated); and

(E) A copy of the most current labeling.

(iii) Periodic reporting, except for information regarding 15-day Alert reports, does not apply to adverse experience information obtained from postmarketing studies (whether or not conducted under an investigational new drug application), from reports in the scientific literature, and from foreign marketing experience.

(iv) Unless otherwise notified by the Director, Center for Biologics Evaluation and Research, each periodic report is also required to contain information about the quantity of the product distributed under the product license, including the quantity distributed to

distributors. The information is required to include the product name, the total number of dosage units of each strength or potency distributed (e.g., 50,000/10-milliliter vials), and the quantities distributed for domestic use and the quantities distributed for foreign use. Disclosure of financial or pricing data is not required. As needed, FDA may require submission of more detailed product distribution information.

(d) *Scientific literature.* (1) A 15-day Alert report based on information from the scientific literature is required to be accompanied by a copy of the published article. The 15-day Alert reporting requirements in paragraph (c)(1)(i) of this section (i.e., serious, unexpected adverse experiences) apply only to reports found in scientific and medical journals either as case reports or as the result of a formal clinical trial. The 15-day Alert reporting requirements in paragraph (c)(1)(ii) of this section (i.e., a significant increase in frequency of a serious, expected adverse experience) apply only to reports found in scientific and medical journals either as the result of a formal clinical trial, or from epidemiologic studies or analyses of experience in a monitored series of patients.

(2) As with all reports submitted under paragraph (c)(1)(i) of this section, reports based on the scientific literature shall be submitted on Form FDA–1639 or comparable format as prescribed by paragraph (f) of this section. In cases where the manufacturer believes that preparing the Form FDA–1639 constitutes an undue hardship, the manufacturer may arrange with the Division of Epidemiology and Surveillance for an acceptable alternative reporting format.

(e) *Postmarketing studies.* (1) Manufacturers are not required to submit a 15-day Alert report under paragraph (c) of this section for an adverse experience obtained from a postmarketing clinical study (whether or not conducted under an investigational new drug application) unless the manufacturer concludes that there is a reasonable possibility that the product caused the adverse experience.

(2) The manufacturer shall separate and clearly mark reports of adverse experiences that occur during a postmarketing study as being distinct from those experiences that are being reported spontaneously to the manufacturer.

(f) *Reporting Form FDA–1639.* (1) Except as provided in paragraphs (c)(1)(ii) and (f)(3) of this section, the manufacturer shall complete a Form FDA–1639 (Adverse Reaction Report) for each report of an adverse experience.

(2) Each completed Form FDA 1639 should refer only to an individual patient. The form should provide numerical identification (e.g., lot number, etc.) of the product associated with the adverse experience, if available.

(3) Instead of using Form FDA–1639, a manufacturer may use a computer-generated Form FDA–1639 or other alternative format (e.g., a computer-generated tape or tabular listing) provided that:

(i) The content of the alternative format is equivalent in all elements of information to those specified in Form FDA 1639; and

(ii) the format is agreed to in advance by the Division of Epidemiology and Surveillance (HFD–730).

(4) Up to 10 copies of Form FDA–1639 may be obtained from the Division of Epidemiology and Surveillance (HFD–730), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Supplies of Form FDA–1639 may be obtained from the PHS Forms and Publications Distribution Center, 12100 Parklawn Dr., Rockville, MD 20852.

(g) *Multiple reports.* A manufacturer should not include in reports under this section any adverse experiences that occurred in clinical trials if they were previously submitted in the product license application. If a report refers to more than one biological product marketed by a manufacturer, the manufacturer should submit a single report to the product license application for the product listed first in the report.

(h) *Patient privacy.* A manufacturer should not include in reports under this section the names and addresses of individual patients; instead, the manufacturer should assign a unique code number to each report, preferably not more than eight characters in length. The manufacturer should include the name of the reporter from whom the information was received. Names of patients, health care professionals, hospitals, and geographical identifiers in adverse experience reports are not releasable to the public under FDA's public information regulations in part 20 of this chapter.

(i) *Recordkeeping.* The manufacturer shall maintain for a period of 10 years all adverse experiences known to the manufacturer, including raw data and any correspondence relating to the adverse experiences.

(j) *Guideline.* FDA has prepared under § 10.90(b) of this chapter a guideline for the submission of reports of adverse experiences and suggested followup investigation of reports.

(k) *Revocation of license.* If a manufacturer fails to establish and maintain records and make reports required under this section with respect to a licensed biological product, FDA may revoke the product license for such product in accordance with the procedures of § 601.5 of this chapter.

(l) *Exemptions.* Manufacturers of the following listed products are not required to submit adverse experience reports under this section:

(1) Whole blood or components of whole blood.

(2) In vitro diagnostic products.

(m) *Disclaimer.* A report of information submitted by a manufacturer under this section (and any release by FDA of that report or information) does not necessarily reflect a conclusion by the manufacturer or FDA that the report or information constitutes an admission that the biological product caused or contributed to an adverse effect. A manufacturer need not admit, and may deny, that the report or information submitted under this section constitutes an admission that the biological product caused or contributed to an adverse effect.

Dated: December 24, 1989.

James S. Benson,

Acting Commissioner of Food and Drugs.

[FR Doc. 90–7117 Filed 3–28–90; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

Kentucky Regulatory Program; Third Party Liability; Correction

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Notice of proposed action to preempt; correction.

SUMMARY: This document corrects a notice of proposed action to preempt certain provisions of State law published on February 12, 1990 (55 FR 4868–4869), concerning an amendment to the Kentucky regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

FOR FURTHER INFORMATION CONTACT: Mr. Roger Calhoun, Acting Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504; telephone (606) 233–7327.

SUPPLEMENTARY INFORMATION: The following corrections are made in a notice proposing to preempt certain provisions of the Kentucky Surface Mining Law (KRS chapter 350) as that notice was published in the **Federal Register** on February 12, 1990 (55 FR 4868–4869).

1. On page 4868, second column, last line, change "KRS 350.093(6)(c)" to "KRS 350.093(9)".

2. On page 4868, third column, line 22, change "KRS 350.093(6)(c)" to "KRS 350.093(9)".

3. On page 4868, third column, line 26, change "KRS 350.093(6)(c)" to "KRS 350.093(9)".

4. On page 4868, third column, line 48, change "KRS 350.093(6)(c)" to "KRS 350.093(9)".

5. On page 4868, third column, line 50, change "KRS 350.093(6)(c)" to "KRS 350.093(9)".

Dated: March 19, 1990.

Carl C. Close,

Assistant Director, Eastern Field Operations.

[FR Doc. 90–7115 Filed 3–28–90; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 917

Kentucky Regulatory Program; Third Party Liability; correction

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Notice of disapproval of proposed amendment; correction.

SUMMARY: This document corrects the notice of disapproval of proposed amendment published on February 12, 1990 (55 FR 4866–4868), concerning an amendment to the Kentucky regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

FOR FURTHER INFORMATION CONTACT: Mr. Roger Calhoun, Acting Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504; telephone (606) 233–7327.

SUPPLEMENTARY INFORMATION: The following corrections are made in a notice of disapproval of proposed amendment to the Kentucky regulatory program as that notice was published in the **Federal Register** on February 12, 1990 (55 FR 4866–4868).

1. On page 4867, second column, line 8, change "KRS 350.093(6)(c)" to "KRS 350.093(9)".

2. On page 4867, second column, line 33, change "KRS 350.093(6)(c)" to "KRS 350.093(9)".

3. On page 4868, first column, line 1, change "KRS 350.093(6)(c)" to "KRS 350.093(9)".

Dated: March 20, 1990.

Carl C. Close,

Assistant Director, Eastern Field Operations.

[FR Doc. 90–7114 Filed 3–28–90; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–90–010]

Special Local Regulations for Marine Events; North/South Challenge at Virginia Beach

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing special local regulations for the North/South Challenge at Virginia Beach to be held in the Atlantic Ocean off Virginia Beach on May 12, 1990. These special local regulations are necessary to control vessel traffic in the immediate vicinity of this event. The effect will be to restrict general navigation in the regulated area for the safety of spectators and participants.

DATES: Comments must be received on or before April 30, 1990.

ADDRESSES: Comments should be mailed or hand carried to Commander (bb), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004. The comments will be available for inspection and copying at Room 209 of this address. Normal office hours are between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Stephen L. Phillips, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–500 (804) 398–6204.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD 05–90–010) and the specific section of the proposal to which their comments apply. Reasons should be given for each comment. The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process. The receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed.

Drafting Information

The drafters of this notice are QM1 Kevin R. Connors, project officer, Boating Affairs Branch, Fifth Coast Guard District, and Lieutenant Steven M. Fitten, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Proposed Regulations

The Offshore Power Boat Racing Association and the East Virginia Offshore Racing Association submitted an application to hold the North/South Challenge at Virginia Beach. The race will consist of approximately 50 powerboats, from 21 to 41 feet in length racing over a course off the beachfront at Virginia Beach, Virginia. Race headquarters will be located at the Comfort Inn at 21st Street and Atlantic Avenue, Virginia Beach, Virginia.

Generally, the race course is cigar shaped, running parallel to the shoreline at Virginia Beach with a dogleg to the southeast at the southern end of the course to allow Rudee Inlet to be used during the event. Vessels outbound from Rudee Inlet will have to turn in a southerly direction to avoid the race area. Vessels inbound to Rudee Inlet will have to enter from the south to avoid the race area. Rudee Inlet will be closed for a short time when the racers depart for the race area and when they return after the race.

The Cape Henry Precautionary Area and the Dam Neck Danger Area are located to the north and south of the race course, respectively. While the race course does not encroach on either of these areas, the regulated area includes the southwest corner of the Cape Henry Precautionary Area and the northeast corner of the Dam Neck Danger Area. To provide for the safety of participants, spectators, and vessels transiting the area, the Coast Guard will restrict vessel movement in the regulated area and has established a temporary spectator anchorage for what is expected to be a large spectator fleet. Coast Guard patrol vessels will be positioned at Rudee Inlet to direct vessels to the temporary spectator anchorage and to instruct transiting

vessels on how to proceed safely around the race course. The sponsor will provide approximately 40 vessels, including 6 medical boats with paramedics on board to assist the Coast Guard and local government agencies in patrolling this event. All vessels will display Official Regatta Patrol signs and identity numbers.

A short hovercraft demonstration by the U.S. Army from Fort Story will be held in the vicinity of the start/finish line off 24th Street prior to the beginning of the race.

In order to publicize these regulations, the Coast Guard will publish details in the Local Notice to Mariners and the **Federal Register.** Representatives of the sponsors and members of the Coast Guard will be present in the vicinity of the race site to inform vessel operators of these regulations and other applicable laws.

Economic Assessment and Certification

These proposed regulations are not considered major under Executive Order 12291 on Federal Regulation nor significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Impact

This rulemaking has been thoroughly reviewed by the Coast Guard and determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.c of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and been placed in the rulemaking docket.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Proposed Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations is amended as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35–05N/S is added to read as follows:

§ 100.35–05N/S Atlantic Ocean, Rudee Inlet, Virginia Beach, VA

(a) *Definitions*—(1) *Regulated area.* The waters of the Atlantic Ocean including Rudee Inlet commencing at a point on the shoreline at latitude 36°54'32.0" North, longitude 75°59'29.0" West; thence east northeast to latitude 36°54'47" North, longitude 75°58'10" West; thence south southeast parallel to the Virginia Beach shoreline to latitude 36°49'23" North, longitude 75°56'09" West; thence southwest to the shoreline at latitude 36°48'44" North, longitude 75°57'56" West.

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Group, Hampton Roads.

(3) *Spectator Anchorage Area.* The waters off the Virginia seacoast bounded by a line connecting the following points:

Latitude	Longitude
36°51'53.0" N	75°57'42.0" W.
36°51'56.0" N	75°57'25.0" W.
36°50'57.0" N	75°57'08.0" W.
36°50'54.0" N	75°57'26.0" W.

(b) *Special Local Regulations.* (1) Except for participants in the North/South Challenge at Virginia Beach and vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area without the permission of the Patrol Commander.

(2) The operator of any vessel in the immediate vicinity of this area shall:

(i) Stop the vessel immediately when directed to do so by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard ensign.

(3) Spectator vessels may anchor in the spectator anchorage areas specified in paragraphs (a)(4)(i) and (a)(4)(ii) of these regulations.

(4) The Coast Guard Patrol Commander may allow vessels to transit the regulated area whenever a race heat is not being run.

(5) Vessel operators are advised to remain clear of the advisory area during the effective periods of this regulation.

(c) *Effective periods:* The regulations are effective from 9 a.m. to 7 p.m., May 12, 1990. If inclement weather causes the postponement of the event, the regulations are effective from 9:00 a.m. to 7 p.m., May 13, 1990.

Dated: March 21, 1990.

P.A. Welling,

Rear Admiral, U.S. Coast Guard Commander. Fifth Coast Guard District.

[FR Doc. 90–7148 Filed 3–28–90; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 60

RIN 0905–AC75

Health Education Assistance Loan Program; Grants

AGENCY: Public Health Service, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would amend existing regulations governing the Health Education Assistance Loan (HEAL) program to include revised procedures for handling HEAL bankruptcies. Under the proposed revisions, insurance claims would no longer be paid on the basis of the filing by a HEAL borrower of a petition in bankruptcy under chapter 7 of the Bankruptcy Act. The claim procedures for filings under chpaters 11 and 13 of the Bankruptcy Act remain unchanged at this time. This proposed rule would also clarify the calculation of the time periods for filing bankruptcy claims and the documentation requirements for bankruptcy claims.

DATES: Comments on this proposed rule are invited. To be considered, comments must be received by May 29, 1990.

ADDRESSES: Respondents should address written comments to Fitzhugh Mullan, M.D., Acting Director, Bureau of Health Professions (BHPr), room 8–05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. All comments received will be available for public inspection and copying at the Office of Program Development, BHPr, Room 8A–55, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland,

weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Ellen Volpe, Special Assistant, Division of Student Assistance, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 8–48, 5600 Fishers Lane, Rockville, Maryland 20857; telephone number: 301–443–1173.

SUPPLEMENTARY INFORMATION: Under the HEAL program, authorized by sections 727–739 of the Public Health Service Act (the Act) (42 U.S.C. 294–294l), the Secretary provides Federal insurance for loans made to students in health professions schools. The loans are made by eligible lenders such as banks, credit unions, savings and loan associations, pension funds, HEAL schools, State agencies or instrumentalities, and insurance companies. Under the statute, the Secretary is required to insure lenders against the losses incurred when a borrower dies, becomes disabled, or defaults on his or her loan.

The HEAL statute does not require the Secretary to pay an insurance claim to a lender or holder because of the filing by a borrower of a petition in bankruptcy where there has been no default on the loan. Indeed, section 733(g) of the Act provides that a HEAL loan may not be discharged in bankruptcy until 5 years after the date on which repayment of the loan must begin. This nondischargeability provision applies to any type of bankruptcy proceeding under the Bankruptcy Act, including chapter 7 ("straight bankruptcy"), chapter 11 (business reorganization), or chapter 13 (the "wage-earner's plan"). After that 5-year period, a HEAL loan may only be discharged upon a finding by the court that not to do so would be "unconscionable"; and even in that case, the discharge is subject to the condition that the Secretary retains the right to reduce Federal reimbursements or payments for health services under any Federal law up to the remaining balance of the loan.

Over the past few years, there has been a great deal of litigation concerning the effect of this unusual provision in the context of chapters 7, 11, and 13 of the Bankruptcy Act. Most of that litigation has involved chapter 7; and the courts have uniformly held that section 733(g) is self-effectuating: *i.e.*, that a holder of a HEAL loan need not even make an appearance in a chapter 7 case in order to avoid discharge of the loan. The holder need only wait until the case is closed and the automatic stay lifted, whereupon he may proceed with the collection of the debt as though no bankruptcy had ever occurred. This legal principle has now been firmly established in Federal bankruptcy courts throughout the country.

Accordingly, it is the Department's view that there is no longer any purpose served by regarding the mere filing of a chapter 7 petition as a basis on which the Secretary should pay off the remaining balance on a HEAL loan. An exception would be retained, however, for cases in which the petitioner files a complaint to determine the dischargeability of the HEAL loan, naming the holder or the Department as defendant.

The Secretary does not propose, at this time, to eliminate the payment of claims based on petitions filed under chapters 11 and 13 of the Bankruptcy Act. Although section 733(g) of the Public Health Service Act on its face applies to all Bankruptcy Act proceedings, the applicability of section 733(g) to chapter 7 petitions is more firmly and widely established because of the much larger volume of chapter 7 cases that have been decided by the courts. Because of the relatively small number of precedential decisions involving chapters 11 and 13 and because of the somewhat more complex nature of the proceedings under those chapters, the Secretary believes it important that Federal attorneys experienced in HEAL bankruptcy litigation continue to handle these cases at this time. We believe, however, that at some point in the future the legal precedents establishing the nondischargeability of HEAL loans will become equally clear for chapter 11 and chapter 13 cases. At that time, the Secretary would consider developing a rule similar to the one proposed today that would cover petitions filed under those chapters as well. Comments on this proposed rule may address the question of extending the rule to chapter 11 and 13 cases as well as the immediate proposal regarding chapter 7 filings.

The specific amendments proposed are described below according to the subparts, section numbers, and headings of the HEAL regulations affected.

Subpart A—General Program Description

Section 60.1 What Is the HEAL Program?

The Department is proposing to amend paragraph (c) of this section to state that the Secretary insures each lender or holder for the losses of principal and interest it may incur in the event that a borrower dies, becomes totally and permanently disabled, files for bankruptcy under chapter 11 or 13 of the Bankruptcy Act, files for bankruptcy under chapter 7 of the Bankruptcy Act and files a complaint to determine the dischargeability of the HEAL loan, or defaults on his or her loan. As discussed above, this change would exclude routine chapter 7 bankruptcies from the category of loans for which claims are paid.

The Department is also proposing to add a new paragraph (e) to this section which would clarify the procedures for calculating any timeframes required by these regulations. This paragraph would state that, in counting the number of days allowed to comply with any provisions of these regulations, Saturdays, Sundays, and holidays are to be included. However, if a due date would fall on a Saturday, Sunday, or Federal holiday, the due date is the next Federal work day. This clarification is necessary to alleviate confusion among lenders and holders regarding the deadline for filing bankruptcy claims with the Secretary.

Subpart C—The Loan

Section 60.14 The Insurance Premium

The Department is proposing to amend paragraph (a)(1) of this section to state that the Secretary insures each lender or holder for the losses of principal and interest it may incur in the event that a borrower dies, becomes totally and permanently disabled, files for bankruptcy under chapter 11 or 13 of the Bankruptcy Act, files for bankruptcy under chapter 7 of the Bankruptcy Act and files a complaint to determine the dischargeability of the HEAL loan, or defaults on his or her loan. As with the change to § 60.1(c), this would exclude routine chapter 7 bankruptcies from the category of loans for which claims are paid.

Subpart D—The Lender

Section 60.32 The HEAL Lender Insurance Contract

The Department is proposing to amend paragraph (a)(1) of this section to state that, under the insurance contract, the Secretary agrees to insure each eligible HEAL loan held by a lender or holder against the borrower's default, death, total and permanent disability, bankruptcy under chapter 11 or 13 of the Bankruptcy Act, or bankruptcy under chapter 7 of the Bankruptcy Act when the borrower files suit against the lender. This change is consistent with those described above.

Section 60.35 HEAL Loan Collection

The Department is proposing to add a new paragraph (g) to this section to state that, if a borrower files for bankruptcy under chapter 7 of the Bankruptcy Act, the lender or holder is responsible for determining what steps, if any, it must take to assure that it retains the right to pursue collection of the loan after the bankruptcy proceedings have been completed. This provision is designed to assure that the interests of the United States are protected by the lender or holder in the case of a chapter 7 bankruptcy.

This paragraph would also state that if an automatic stay is place on the collection of a HEAL loan, due to circumstances such as bankruptcy, only periods of delinquency following the end of the automatic stay can be included in determining default, as described in § 60.40(c)(1)(i). After the automatic stay is lifted, the lender or holder would be required to attempt to obtain repayment from the borrower through written and telephone contacts in accordance with the intervals established in § 60.35(a)(1), and to perform the other HEAL loan collection activities required in § 60.35, before filing a default claim. Thus, if a borrower who is 45 days delinquent on his or her HEAL loan files for bankruptcy under chapter 7, the lender or holder would be required to ignore the earlier delinquency of 45 days and begin the activities required under § 60.35 again; for instance to perform at least 4 followup contacts, over a period of 120 days, beginning within 15 days after the automatic stay on collection activities was lifted. The lender or holder would also be required to perform the other due diligence requirements, including use of collection agents, credit bureaus, and litigation, following the end of the automatic stay, before filing a default claim. This provision is designed to assure that, upon completion of chapter 7 bankruptcy proceedings, when a borrower's financial situation could be very different than it was prior to bankruptcy, the lender or holder will make reasonable attempts to bring the borrower back into repayment before filing a default claim.

Section 60.38 Assignment of a HEAL Loan

The Department is proposing to add a new paragraph (d) to this section to address situations in which a lender or holder assigns a HEAL loan to a new holder, or a new holder acquires a HEAL loan under 20 USC 1092a (the Combined Payment Plan authority), and the previous holder subsequently receives court notice that the borrower has filed for bankruptcy. In these cases, the previous holder would be required to forward the bankruptcy notice to the new holder within 10 days of the initial date of receipt, as documented by a date stamp. The previous holder also would be required to file a statement with the court notifying it of the change of ownership. This provision is intended to assure that the current holder of a loan receives timely notification of bankruptcy proceedings.

Section 60.40 Procedures for Filing Claims

The Department is proposing to amend paragraph (c)(1)(i) of this section to state that when an automatic stay is imposed on collection activities, by a bankruptcy court, the 120- or 180-day period during which the borrower must have failed to make payments to be considered to be in default does not include any period of time prior to the end of the automatic stay. For example, if a borrower with a monthly repayment schedule is 60 days delinquent at the time an automatic stay goes into effect, due to a chapter 7 bankruptcy, this loan would not be considered to be in default until 120 days after the automatic stay ended. This provision is designed to assure that the 120- or 180-day period used to determine default does not include periods which preceded the bankruptcy proceedings, when the borrower's financial situation most likely would have been very different, or periods during which the lender or holder is prohibited legally from pursuing collection of the loan.

The Department also is proposing to amend paragraph (c)(1)(ii) of this section to include a new subparagraph (F). This subparagraph would require that, for a defaulted borrower who previously filed for bankruptcy under chapter 7 of the Bankruptcy Act, the lender or holder must submit with its default claim appropriate documentation which shows the period of the bankruptcy proceedings and indicates that the lender or holder handled the bankruptcy properly and expeditiously. This documentation is necessary for the Department to assure that the lender complied with the requirements of § 60.35(g).

The Department is proposing to amend paragraph (c)(1)(iii) of this section to state that, if a lender or holder files a default claim on a loan and subsequently receives court notice that the borrower has filed for bankruptcy, the lender or holder must file that notice with the Secretary within 10 days of the date that the lender or holder initially receives the court notice, as documented by a date stamp. Currently, this provision is unclear regarding the starting point for calculating the 10-day period. The period for filing the notice after receipt would continue to be limited to 10 days to allow Federal attorneys to file pleadings in the bankruptcy court on a timely basis. The revised provision also would clarify that the Secretary is to be notified of the pending bankruptcy upon receipt by the lender or holder of any type of court notification of bankruptcy. The current regulatory provision requires only that a notice of meeting of creditors be forwarded to the Secretary.

The Department also is proposing to amend paragraph (c)(4) to reflect the elimination of routine chapter 7 bankruptcies from category of claims paid. The requirement that a lender or holder must file a claim for a routine chapter 7 bankruptcy within 30 days after the lender or holder receives the notice of the first meeting of creditors would be deleted. The revised paragraph would require that, for a bankruptcy under chapter 11 or 13 of the Bankruptcy Act, and for a chapter 7 bankruptcy where the debtor files a complaint to determine the dischargeability of the HEAL loan, the lender or holder must file a claim within 10 days of the initial date of receipt of court notice that the borrower has filed for bankruptcy under chapter 11 or chapter 13, or has filed a complaint to determine the dischargeability of the HEAL loan under chapter 7. The initial date of receipt of court notice must be documented by a date stamp. Currently, this provision is unclear regarding the starting point for calculating the 10-day period. The period for filing the notice after receipt would continue to be limited to 10 days to allow Federal attorneys to file pleadings in the bankruptcy court on a timely basis.

Finally, the Department is proposing to add new paragraphs (c)(4) (vii), (viii), and (ix) to this section to require that the lender or holder submit the following documentation with each bankruptcy claim:

(1) The notice of the first meeting of creditors, or an explanation as to why this is not included;

(2) In cases where there is defective service, a declaration or affidavit attesting to the fact that the lender or holder was not directly served with the notice of meeting of creditors. This declaration or affidavit must also indicate when and how the lender or holder learned of the bankruptcy; and

(3) In cases where there is defective service due to the borrower's failure to list the proper creditor, a copy of the

letter sent to the borrower at the time of purchase of the HEAL loan by the current holder, or a sample letter with documentation indicating when the letter was sent to the borrower.

These documents are needed by the Federal attorneys who would be representing the Federal Government in the bankruptcy proceedings.

Section 60.41 Determination of Amount of Loss on Claims

The Department is proposing to amend paragraph (e)(1) of this section to specify that the reference to bankruptcy claims includes only claims filed by a lender or holder for loans in cases under chapter 11 or 13 of the Bankruptcy Act and under chapter 7 when a borrower files a complaint to determine the dischargeability of the HEAL loan. As discussed above, this change would exclude routine chapter 7 bankruptcies from the category of loans for which claims are paid.

Regulatory Flexibility Act and Executive Order 12291

The Department believes that the resources required to implement the proposed requirements in these regulations are minimal in comparison to the overall resources of lenders and holders. Under this proposed rule, lenders and holders would be responsible for handling routine chapter 7 bankruptcies. Since, as indicated above, the nondischargeability provision which applies to HEAL loans is self-effectuating, the additional resources required to handle routine chapter 7 bankruptcies would be minimal. Therefore, in accordance with the requirements of the Regulatory Flexibility Act of 1980, the Secretary certifies that these regulations will not have a significant impact on a substantial number of HEAL lenders or holders.

The Department has also determined that this rule is not a major rule under Executive Order 12291; therefore, a regulatory impact analysis is not required. In addition, the rule will not exceed the threshold level of $100 million established in section (b) of Executive Order 12291.

Paperwork Reduction Act of 1980

Sections 60.40(c)(1)(ii)(F) and 60.40(c)(4) (vii), (viii), and (ix) of these proposed regulations contain information collection requirements which have been approved under 42 CFR 60.40(c)(4) by the Office of Management and Budget under section 3507 of the Paperwork Reduction Act of 1980. These collection requirements and the burden hours associated with them are included in OMB control number 0915–0108. This proposed rule does not impose additional information collections.

List of Subjects in 42 CFR Part 60

Educational study programs, Medical and dental schools, Health professions, Reporting requirements, Loan programs-education, Student aid, Loan programs-health.

Accordingly, the Department of Health and Human Services proposes to amend 42 CFR part 60 as follows:

Dated: August 21, 1989.

James O. Mason,

Assistant Secretary for Health.

Approved: February 13, 1990.

Louis W. Sullivan,

Secretary.

(Catalog of Federal Domestic Assistance, No. 13.108, Health Education Assistance Loan Program)

PART 60—HEALTH EDUCATION ASSISTANCE LOAN PROGRAM

1. The authority citation for 42 CFR part 60 continues to read as follows:

Authority: Section 215 of the Public Health Service Act, 58 Stat. 690, as amended, 63 Stat. 35 (42 U.S.C. 216); secs. 727–739 of the Public Health Service Act, 90 Stat. 2243, as amended, 93 Stat. 582, 99 Stat. 529–532 (42 U.S.C. 294–294*l*).

2. Section 60.1, in subpart A, is amended by revising paragraph (c) and adding a new paragraph (e) to read as follows:

Subpart A—General Program Description

§ 60.1 What is the HEAL program?

* * * * *

(c) The Secretary insures each lender or holder for the losses of principal and interest it may incur in the event that a borrower dies; becomes totally and permanently disabled; files for bankruptcy under chapter 11 or 13 of the Bankruptcy Act; files for bankruptcy under chapter 7 of the Bankruptcy Act and files a complaint to determine the dischargeability of the HEAL loan; or defaults on his or her loan. In these instances, if the lender or holder has complied with all HEAL statutes and regulations, and with the lender's or holder's insurance contract, and the Secretary pays the amount of the loss to the lender or holder, the borrower's loan is then assigned to the Secretary. Only at that time, the United States Government becomes the borrower's direct creditor and will actively pursue the borrower for repayment of the debt, including reporting the borrower's default on the loan to consumer credit reporting agencies or to the Internal Revenue Service for purposes of locating such taxpayer or for income tax refund offset, and referral to the Department of Justice for litigation.

* * * * *

(e) Calculating time periods. In counting the number of days allowed to comply with any provisions of these regulations, Saturdays, Sundays, and holidays are to be included. However, if a due date falls on a Saturday, Sunday, or Federal holiday, the due date is the next Federal work day.

3. Section 60.14, in subpart C, is amended by revising paragraph (a)(1) to read as follows:

Subpart C—The Loan

§ 60.14 The insurance premium.

(a) General. (1) The Secretary insures each lender or holder for the losses of principal and interest it may incur in the event that a borrower dies; becomes totally permanently disabled; files for bankruptcy under chapter 11 or 13 of the Bankruptcy Act; files for bankruptcy under chapter 7 of the Bankruptcy Act and files a complaint to determine the dischargeability of the HEAL loan; or defaults on his or her loan. For this insurance, the Secretary charges the lender an insurance premium. The insurance program is due to the Secretary on the date of disbursement of the HEAL loan.

* * * * *

4. Section 60.32, in subpart D, is amended by revising the heading of the section and paragraph (a)(1) to read as follows:

Subpart D—The Lender

§ 60.32 The HEAL lender or holder insurance contract.

(a)(1) If the Secretary approves an application to be a HEAL lender or holder, the Secretary and the lender or holder must sign an insurance contract. Under this contract, the lender or holder agrees to comply with all the laws, regulations, and other requirements applicable to its participation in the HEAL program and the Secretary agrees to insure each eligible HEAL loan held by the lender or holder against the borrower's default, death, total and permanent disability, bankruptcy under chapter 11 or 13 of the Bankruptcy Act, or bankruptcy under chapter 7 of the Bankruptcy Act when the borrower files a complaint to determine the dischargeability of the HEAL loan. The Secretary's insurance covers 100 percent of the lender's or holder's losses on both unpaid principal and interest, except to

the extent that a borrower may have a defense on the loan other than infancy.

* * * * *

5. Section 60.35 is amended by adding a new paragraph (g) to read as follows:

§ 60.35 HEAL loan collection.

* * * * *

(g) If a borrower files for bankruptcy under chapter 7 of the Bankruptcy Act, the lender or holder is responsible for determining what steps, if any, it must take to assure that it retains the right to pursue collection of the loan after the bankruptcy proceedings have been completed. Only periods of delinquency following the end of the automatic stay imposed by the Bankruptcy Court can be included in determining default, as described in § 60.40(c)(1)(i). After the automatic stay is lifted, the lender or holder must attempt to obtain repayment from the borrower through written and telephone contacts in accordance with the intervals established in paragraph (a)(1) of this section, and must perform the other HEAL loan collection activities required in this section, before filing a default claim.

6. Section 60.38 is amended by adding a new paragraph (d) to read as follows:

§ 60.38 Assignment of a HEAL loan.

* * * * *

(d) Bankruptcy. If a lender or holder assigns a HEAL loan to a new holder, or a new holder acquires a HEAL loan under 20 USC 1092a (the Combined Payment Plan authority), and the previous holder subsequently receives court notice that the borrower has filed for bankruptcy, the previous holder must forward the bankruptcy notice to the new holder within 10 days of the initial date of receipt, as documented by a date stamp. The previous holder also must file a statement with the court notifying it of the change of ownership.

7. Section 60.40 is amended by revising paragraphs (c)(1)(i), (c)(1)(ii) (D) and (E), (c)(1)(iii), and the introductory text in paragraph (c)(4), and by adding new paragraphs (c)(1)(ii)(F), and (c)(4) (vii), (viii), and (ix) to read as follows:

§ 60.40 Procedures for filing claims.

* * * * *

(c) * * *

(1) *Default claims.* (i) If a lender or holder determines that it is not appropriate to file suit against a defaulted borrower pursuant to § 60.35(c)(3), it must file a default claim with the Secretary within 30 days after a loan has been determined to be in default. "Default" means the persistent failure of the borrower to make a payment when due or to comply with other terms of the note or other written agreement evidencing a loan under circumstances where the Secretary finds it reasonable to conclude that the borrower no longer intends to honor the obligation to repay the loan. In the case of a loan repayable (or on which interest is payable) in monthly installments, this failure must have persisted for 120 days. In the case of a loan repayable (or on which interest is payable) in less frequent installments, this failure must have persisted for 180 days. If an automatic stay is imposed on collection activities by a Bankruptcy Court, the 120- or 180-day period does not include any period prior to the end of the automatic stay.

(ii) * * *

(D) The original or a copy of all correspondence relevant to the HEAL loan to or from the borrower (whether received by the original lender, a subsequent holder, or an independent servicing agent);

(E) A claims collection litigation report; and

(F) If the defaulted borrower filed for bankruptcy under chapter 7 of the Bankruptcy Act, appropriate documentation which shows the period of the bankruptcy proceedings and indicates that the lender or holder handled the bankruptcy properly and expeditiously.

(iii) If the lender or holder files a default claim on a loan and subsequently receives court notice that the borrower has filed for bankruptcy, the lender or holder must file that notice with the Secretary within 10 days of the date that the lender or holder initially received the court notice, as documented by a date stamp. If the Secretary has not paid the claim at the time the lender or holder receives that notice, upon receipt of the notice, the lender or holder must file with the bankruptcy court a proof of claim, if applicable, and an objection to the discharge or compromise of the HEAL loan. If the Secretary has paid the claim, the lender or holder must file a statement to that effect with the court.

* * * * *

(4) *Bankruptcy claims.* For a bankruptcy under chapter 11 or 13 of the Bankruptcy Act, or a bankruptcy under chapter 7 of the Bankruptcy Act when the borrower files a complaint to determine the dischargeability of the HEAL loan, a lender or holder must file a claim with the Secretary within 10 days of the initial date of receipt of court notice that the borrower has filed for bankruptcy under chapter 11 or chapter 13, or has filed a complaint to determine the dischargeability of the HEAL loan under chapter 7. The initial date of receipt of the court notice must be documented by a date stamp. The lender or holder must file with the bankruptcy court a proof of claim, if applicable, and an objection to the discharge or compromise of the HEAL loan. In addition to the documentation required for all claims, with its claim the lender or holder must submit to the Secretary at least the following:

* * * * *

(vii) The notice of the first meeting of creditors, or an explanation as to why this is not included;

(viii) In cases where there is defective service, a declaration or affidavit attesting to the fact that the lender or holder was not directly served with the notice of meeting of creditors. This declaration or affidavit must also indicate when and how the lender or holder learned of the bankruptcy; and

(ix) In cases where there is defective service due to the borrower's failure to list the proper creditor, a copy of the letter sent to the borrower at the time of purchase of the HEAL loan by the current holder, or a sample letter with documentation indicating when the letter was sent to the borrower.

8. Section 60.41 is amended by revising paragraph (e)(1) to read as follows:

§ 60.41 Determination of amount of loss on claims.

* * * * *

(e) * * *

(1) If the lender or holder failed to submit a claim within the required period after the borrower's default; death; total and permanent disability; or filing of a petition in bankruptcy under chapter 11 or 13 of the Bankruptcy Act, or under chapter 7 where the borrower files a complaint to determine the dischargeability of the HEAL loan; the Secretary does not pay interest that accrued between the end of that period and the date the Secretary received the claim.

* * * * *

[FR Doc. 90-6954 Filed 3-28-90; 8:45 am]
BILLING CODE 4160-15-M

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42 CFR Part 72

Interstate Shipment of Etiologic Agents

AGENCY: Centers for Disease Control (CDC), Public Health Service, Department of Health and Human Services.

ACTION: Extension of comment period on proposed rule; change in CDC contact person.

SUMMARY: The comment period for the Notice of Proposed Rulemaking (NPRM) for 42 CFR Part 72—Interstate Shipment of Etiologic Agents (55 FR 7678) is extended to May 2, 1990. Additionally, the contact person is changed.

DATES: The comment period is extended to May 2, 1990.

ADDRESSES: Comments may be mailed to Dr. Michael P. Kiley, Office of Health and Safety, Centers for Disease Control, 1600 Clifton Road, Atlanta, Georgia 30333.

FOR FURTHER INFORMATION CONTACT: Dr. Michael P. Kiley (see address above), telephone (404) 639–3883.

SUPPLEMENTARY INFORMATION: On March 2, 1990, CDC published in the **Federal Register** an NPRM to revise 42 CFR Part 72—Interstate Shipment of Etiologic Agents (55 FR 7678). The NPRM included a 30-day comment period, which would end on April 2. Due to public interest, the date by which comments must be received is extended to May 2, 1990. Also, because the original CDC contact person has retired, a new contact person is named.

Dated: March 23, 1990.

Robert L. Foster,

Acting Director, Office of Program Support Centers for Disease Control.

[FR Doc. 90–7181 Filed 3–28–90; 8:45 am]

BILLING CODE 4160–18–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 22, and 25

[General Docket 89–626; DA 90–446]

Cordless Telephone Operation on Off-set Frequencies

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of time for reply comments.

SUMMARY: This action extends the time for filing reply comments in response to the proposed rule in this proceeding (55 FR 2852, January 29, 1990). Telecommunications Industry Association (TIA) filed a request for an extension of time in order to prepare and coordinate reply comments with its members. The technical issues are complex, and TIA represents a large number of entities whose views should be considered. In order to objectively review the various technical issues in this proceeding, the Commission is extending the time for filing reply comments.

DATES: Reply comments are new due April 4, 1990.

ADDRESSES: Federal Communications Commission; Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Raymond LaForge. Office of Engineering and Technology. (202) 653–8117.

SUPPLEMENTARY INFORMATION:

In the matter of Amendment of part 15 of the Commission's Rules to permit cordless telephone operation on off-set frequencies (GEN Docket No. 89–626).

Adopted: March 16, 1990.
Released: March 23, 1990.
By the Office of Engineering and Technology.

1. The Telecommunications Industry Association (TIA) has requested that the Commission extend the period for filing reply comments in response to the Rule Making in GEN Docket No. 89–626. Reply comments currently are due March 20, 1990. TIA requests an extension of the reply comment period to April 4, 1990.

2. TIA argues that the technical issues are complex and have important long-term implications. Further, TIA claims that the extensions will permit it to review all the comments which may be filed and to prepare and coordinate reply comments with its numerous members. TIA indicates that it has a meeting scheduled with its members for March 27, 1990, which should provide it with the opportunity to coordinate with them. TIA requests a week from the date of that meeting to prepare its comments.

3. We believe that it is in the public interest to develop a complete record in this proceeding by allowing TIA to address fully the technical issues raised in the NPRM. TIA has adequately justified its requested extension, and the extension will not impede the Commission's progress in this proceeding. For these reasons, we are granting the requested extension of time. We believe that 15 days should provide ample time for all parties to reply to the comments received in response to the NPRM.

4. This action is taken pursuant to authority found in sections 4(i), 302, and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 302, and 303, and pursuant to §§ 0.31 and 0.241 of the Commission's Rules 47 CFR 0.31 and 0.241.

5. Accordingly, it is ordered that the period for filing reply comments in this proceeding is extended from March 20, 1990 to April 4, 1990.

Federal Communications Commission.

Thomas P. Stanley,

Chief Engineer.

[FR Doc. 90–7120 Filed 3–28–90; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of Finding on Petition To List Three Invertebrates

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 90-day petition finding for a petition to amend the List of Endangered and Threatened Wildlife and Plants. The petitioners did not present substantial information that listing *Caecidotea* near *tridentata* and *Crangonyx* sp. may be warranted. Nor did they present substantial information that the Clanton's cave amphipod, *Stygobromus clantoni*, should be emergency listed. The Service has previously determined that listing *S. clantoni* is warranted but precluded.

DATES: The finding announced in this notice was made on January 25, 1990.

ADDRESSES: Questions or comments concerning this finding should be sent to: State Supervisor, U.S. Fish and Wildlife Service, Fish and Wildlife Enhancement, 315 Houston Street, Suite E, Manhattan, Kansas 66502. The petition, finding, and supporting data are available for public inspection, by appointment, during normal business hours at the above address and at the Service's Denver Regional Office, 134 Union Boulevard, Lakewood, Colorado (mailing address: P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225).

FOR FURTHER INFORMATION CONTACT: Mr. Daniel W. Mulhern at the Manhattan address above (913/539–3474).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act (Act) of 1973, as amended in 1982 (16 U.S.C. 1531 et seq.), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. To the maximum

extent practicable, this finding is to be made within 90 days of receipt of the petition, and the finding is to be published promptly in the Federal Register. If the finding is positive, the Service also is required to promptly commence a review of the status of the involved species.

Petition: The Service has received and made a 90-day finding on the following petition:

A petition dated September 13, 1989, was received from the Kansas Speleological Society and the National Speleological Society on September 22, 1989. The petition requested the Service to issue emergency rules to add to the List of Threatened and Endangered Species and/or designate critical habitat for three species of cave invertebrates: Clanton's cave amphipod, *Stygobromus clantoni;* an undescribed amphipod, *Crangonyx* sp.; and an isopod, tentatively identified as *Caecidotea* near *tridentata,* which has subsequently been identified as *C. acuticarpa.*

The petition indicated that emergency rules were necessary to prevent the destruction of Stone Cave in Butler County, Kansas, from which the organisms had been documented. Planned construction of a maximum security correctional institution, known as the El Dorado Valley View Prison, was cited as a threat to the cave's existence. The area proposed for prison construction is on a limestone ridge which runs from southeast to northwest across the site. Stone Cave, the entrance of which is at the southeast end of the ridge, was believed to run under this ridge through the proposed construction site.

The petitioners further contended that the project would destroy the cave below the prison, blocking subterranean water flow through it and eliminating the occurrence of these organisms. However, at the time of the petition it was not known whether or not any passage from Stone Cave did, in fact, occur beneath the proposed prison site.

Service Information: A review by the Service's State Office of Fish and Wildlife Enhancement in Manhattan, Kansas, determined that very little is known about any of these species, other than the few occurrences reported for each. It was further determined that there is no conflict between the proposed construction site and the existence of Stone Cave. *S. clantoni* is already being addressed by a 1974 petition to the Service; an administrative finding indicated that listing was warranted but precluded (49 FR 2485–2488, January 20, 1984).

The Kansas Department of Wildlife and Parks included *S. clantoni* in a 1986 evaluation of species for possible addition to their own list of endangered species. They were unable to obtain sufficient status data, and no listing action was taken. They have no survey data on record for any of the three species.

The Kansas Natural Heritage Program provided the occurrence data cited in the petition. They further responded to our inquiry by citing an overall lack of general biology or range-wide status information for any of these species, questioning the soundness of a listing decision based upon such a paucity of data.

The Kansas Geological Survey informed the Service by letter dated October 24, 1989, that their survey results gave no clear indication that the proposed construction would result in adverse impacts to the cave system. Although they indicated that the possibility could not be ruled out that the cave might occur beneath the proposed site, they believed there were construction techniques available which could be implemented to avoid destruction of the cave. Similar information was provided by a consulting firm under contract to the Kansas Department of Corrections.

At the request of many of the involved parties, a physical survey of the cave was conducted on November 8, 1989, in an attempt to map the passages to determine if a possible conflict existed with the prison site. Participating in this survey were representatives of the Kansas Biological Survey, Kansas Division of Water Resources, the National Speleological Society, and the city of El Dorado. Due to an excess of water and a shortage of oxygen, the group was unable to survey to the extent they had wanted. But their preliminary findings, although inconclusive, indicate that Stone Cave does not extend beneath the proposed site.

The Missouri Department of Conservation has indicated that they do not recommend listing of any of these species, because of the lack of status information for *S. clantoni* and *C.* near *tridentata* and the poor taxonomic definition of *Crangonyx* sp. They recommended survey work be conducted on these organisms. The Missouri Natural Heritage Inventory informed us that specimens of the genus *Caecidotea* are very common in Missouri, but taxonomically separating *tridentata* is difficult. They have no data on its abundance, distribution, or occurrence.

Dr. John Holsinger, an amphipod specialist in Norfolk, Virginia, aided with the identification of the specimens taken from Stone Cave. He concurred that inadequate survey work had been done on these species but believed that *S. clantoni* may, in fact, warrant threatened status. Dr. Thomas Bowman, an isopod specialist with The Smithsonian Institution, informed us that *Caecidotea* near *tridentata* was originally described from northeast Kansas and previously was common along the Kansas and Marais des Cygnes River Basins. He suggested it also may possibly occur in Oklahoma, Missouri, and Nebraska. On December 5, 1989, Dr. Bowman positively identified *C.* near *tridentata* as *C. acuticarpa,* previously known only from Oklahoma.

After a review of the petition, accompanying documentation, references cited therein, and additional information obtained, the Service found the petition presented information insufficient to conclude that the requested actions may be warranted.

Author

This notice was prepared by Daniel W. Mulhern (see **ADDRESSES**).

Authority

The authority for this action is 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1543 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Fish, Marine mammals, Plants (agriculture).

Dated: March 21, 1990.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 90–7161 Filed 3–28–90; 8:45 am]

BILLING CODE 4310–55–M

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50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period on Proposed Threatened Status for the Northern Spotted Owl

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of reopening of comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) gives notice that the comment period on the proposal to list the northern spotted owl (*Strix occidentalis caurina*) as a threatened species is reopened. The reopening of the comment period will allow comments on this proposal to be submitted by all interested parties.

DATES: The comment period for this proposal is reopened and now closes on

April 11, 1990. Comments must be received by the closing date. Any comments that are received after the closing date may not be considered in the final decision on this proposal.

ADDRESSES: Written comments and materials concerning this proposal should be sent to the Spotted Owl Listing Coordinator, U.S. Fish and Wildlife Service, 2800 Cottage Way, room E–1823, Sacramento, California 95825. Comments and materials received will be available for public inspection during normal business hours, by appointment, at the above address.

FOR FURTHER INFORMATION CONTACT: Dr. Kathleen E. Franzreb, Spotted Owl Listing Coordinator, U.S. Fish and Wildlife Service, at the above address (916/978–4351 or FTS 460–4351).

SUPPLEMENTARY INFORMATION:

Background

The northern spotted owl (*Strix occidentalis caurina*) is found from southwestern British Columbia through western Washington, western Oregon, and the coast range areas of northwestern California south to San Francisco Bay. A proposal of threatened status for the northern spotted owl was published in the **Federal Register** (54 FR 26666) on June 23, 1989. The comment period on the proposal originally closed on September 21, 1989, but was extended to December 20, 1989 (54 FR 38256) to permit analysis and submission of data on spotted owl investigations that were conducted during the spring and summer of 1989.

The Interagency Spotted Owl Scientific Committee, endorsed by Congress in its passage of section 318 of the 1990 Interior Appropriations Act, was established by the U.S. Forest Service, U.S. Fish and Wildlife Service, National Park Service, and Bureau of Land Management to prepare a conservation strategy for the northern spotted owl. As part of the development of this strategy, the committee has assimilated and analyzed data and other information on the northern spotted owl to aid in the evaluation of possible management strategies. To accommodate submission of this plan and significant additional biological information pertaining to the status of the owl, the Service is reopening the comment period on the proposal for 14 days from March 29 to April 11, 1990. Written comments must be received by the Service at the Service office in the **ADDRESSES** section by the close of the comment period.

Author

This notice was prepared by Dr. Kathleen E. Franzreb, Spotted Owl Listing Coordinator, U.S. Fish and Wildlife Service, 2800 Cottage Way, room E–1823, Sacramento, California 95825.

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1543; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: March 23, 1990.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 90–7133 Filed 3–28–90; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 55, No. 61
Thursday, March 29, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

March 23, 1990.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Public Law 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250 (202) 447–2118.

Extension

• Animal and Plant Health Inspections Service.

Permit for Movement of Restricted Animals.

VS 1–27.

On occasion.

Farms; 35,939 responses; 2,052 hours; not applicable under 3504(h).

Dr. G.H. Frye, (301) 436–8711.

Donald E. Hulcher,

Acting Departmental Clearance Officer.

[FR Doc. 90–7152 Filed 3–28–90; 8:45 am]

BILLING CODE 3410–01–M

Office of the Secretary

[Docket No. 90–005N]

Nominations for Membership on the National Advisory Committee on Microbiological Criteria for Foods

This notice announces the Department's intent to solicit nominations for membership on the National Advisory Committee on Microbiological Criteria for Foods.

The Committee was established in April 1988 as a result of a recommendation by a 1985 report of the National Academy of Sciences, Committee on Food Protection, Subcommittee on Microbiological Criteria, entitled "An Evaluation of the Role of Microbiological Criteria for Foods."

The Committee provides advice and recommendations to the Secretaries of Agriculture and Health and Human Services concerning the development of microbiological criteria by which the safety and wholesomeness of food can be assessed, including criteria for microorganisms that indicate whether food has been processed using good manufacturing practices.

Nominations for membership are being sought from individuals with scientific expertise in the fields of Epidemiology, Food Technology, Microbiology, Packaging, Pathology, Public Health, and/or Toxicology.

Appointment(s) to the Committee will be made by the Secretary of Agriculture, after consultation with the Secretary of Health and Human Services. Nominees will be considered without discrimination for any reason such as race, color, religion, sex, national origin, age, or marital status. Because of the complexity of the issues to be addressed, it is anticipated that the full committee will meet quarterly and subcommittees will meet as deemed necessary.

Interested persons are invited to submit a typed resume to Catherine M. DeRoever, Director, Executive Secretariat, Food Safety and Inspection Service, room 3175-South Building, 14th and Independence Avenue, SW., Washington, DC 20250. Nominations for membership must be postmarked no later than April 16, 1990. For additional information, please contact Ms. DeRoever at the above address, or by telephone on (202) 447–9150.

Done at Washington, DC, on March 23, 1990.

Lester M. Crawford,

Chairman.

[FR Doc. 90–7203 Filed 3–28–90; 8:45 am]

BILLING CODE 3410–DM–M

Privacy Act of 1974; Amendment of an Existing System of Records

AGENCY: Office of the Secretary, USDA.

ACTION: Amendment of an existing system of records.

SUMMARY: The purpose of this notice is to add a new routine use of the system of records known as USDA/OP–1.

EFFECTIVE DATE: Comments received on or before March 14, 1990, will be considered. Unless comments are received which would require a contrary determination, this amendment shall be effective as proposed without further notice May 29, 1990.

ADDRESSES: Comments should be addressed to Carolyn Wright, Security, Employee and Labor Relations Staff, Office of Personnel, Department of Agriculture, room 16–W, Administration Building, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Mary Ellen Recchia, (202) 447–8580.

SUPPLEMENTARY INFORMATION: On August 23, 1989, the Office of Personnel Management (OPM) published a notice concerning a proposed U.S. Department of Agriculture (USDA) demonstration project under 5 U.S.C. chapter 47 involving an alternative personnel management system. The project will test an alternative recruitment and hiring system, recruitment incentives, and an extended probationary period.

At any given time over a 5-year period, this demonstration project will cover up to 5,000 newly hired employees of the Agricultural Research Service (ARS) and the Forest Service nationwide.

To comply with the requirement that the project be evaluated to determine the impact of the results against the objectives, and to determine whether permanent changes in law or regulation should be considered or proposed, USDA/ARS has entered into a cooperative agreement with the Pennsylvania State University (hereinafter called the cooperator) to conduct the evaluation. To do so, the cooperator must have access to personal information concerning the new employees. Also, in order to establish a base against which the project results can be measured, the cooperator must have access to identical information concerning approximately 30,000 current USDA employees.

To facilitate the evaluation, USDA is adding a routine use to its Personnel and Payroll System for USDA Employees, USDA/OP-1, which will allow the cooperator to have access to necessary personal information concerning employees and certain prospective employees. Accordingly, the Office of Personnel is amending its system of records known as USDA/OP-1, published at 49 FR 45071 et seq., December 10, 1984, as follows:

USDA/OP-1

System Name:

Personnel and Payroll System for USDA Employees, USDA/OP.

Routine Use of Records Maintained in the System, Including Categories of Users and the Purposes of Such Uses:

* * * * *

(26) The cooperator(s) selected to evaluate personnel-related demonstration projects.

Dated: March 23, 1990.

Clayton Yeutter,

Secretary.

[FR Doc. 90-7227 Filed 3-28-90; 8:45 am]

BILLING CODE 3410-96-M

Cooperative State Research Service

National Agricultural Research and Extension Users Advisory Board; Meeting

According to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776), the Office of Grants and Program Systems, Cooperative State Research Service, announces the following meeting:

Name: National Agricultural Research and Extension Users Advisory Board.

Date. May 14-16, 1990.

Time. 8:00 a.m.-5:00 p.m., May 14, 1990; 8:00 a.m.-5:00 p.m., May 15, 1990; 8:00 a.m.-12:00 noon, May 16, 1990.

Place: Northern Regional Research Center, 1815 North University Street, Peoria, Illinois.

Type of meeting: Open to the public. Persons may participate in the meeting as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person below.

Purpose: To review ARS research on non-food uses of agricultural commodities and hear presentations on bridging the gap between research and commercialization of new agricultural products.

Contact person for agenda and more information: Marshall Tarkington, Executive Secretary, National Agricultural Research and Extension Users Advisory Board; room 432-A, Administration Building, U.S. Department of Agriculture, Washington, DC 20250-2200; telephone (202) 447-3684.

Done in Washington, DC, this 22d day of March 1990.

John Patrick Jordan,

Administrator.

[FR Doc. 90-7151 Filed 3-28-90; 8:45 am]

BILLING CODE 3410-MT-M

Forest Service

Tippets Valley Timber Sale, Dixie National Forest, Iron County, UT

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement on a proposal to harvest timber in the Tippets Valley area of the Cedar City Ranger District, Dixie National Forest. The area is approximately 20 miles east of Cedar City, Utah.

An Environmental Assessment was completed for the harvesting of sawtimber in the Tippets Valley area, with the Decision Notice signed on May 2, 1986. This was prior to the completion of the Dixie National Forest Land and Resource Management Plan. A decision has been made to withdraw the May 2, 1986 decision and to prepare an environmental impact statement to ensure compliance with the Forest Plan and to provide for additional scoping and the analysis of additional issues and concerns.

The agency is seeking information and comments from Federal, State and local agencies and other individuals and organizations who may be interested in or affected by the proposed action. This input will be used in preparing the Draft Environmental Impact Statement.

DATES: Comments concerning the scoping should be received by May 15, 1990.

ADDRESSES: Submit written comments and suggestions to District Ranger Cedar City Ranger District, Dixie National Forest, P.O. Box 627, Cedar City, UT 84721-0627.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and EIS to Randall R. Hayman, Forester, Cedar City Ranger District, P.O. Box 627, Cedar City, UT 84721-0627, phone (801) 865-3200.

SUPPLEMENTARY INFORMATION: The need for the proposed action is to proceed with the implementation of the Dixie National Forest Land and Resource Management Plan and the attainment of the desired future conditions specified in the Plan. The proposed action will be accomplished in coordination with other resources and uses, and will provide a flow of timber from National Forest land.

Management activities under consideration would occur in an area encompassing approximately 3700 acres of National Forest system lands. The area contains stands of conifer and aspen, open areas of brush and grass, scattered wet meadows, intermittent drainages, and is bordered on two sides by sizable lava flows. Portions of the area have been logged in the past. The area is grazed by permitted cattle and is popular for fuelwood gathering, hunting and winter snowmobiling.

The EIS will tier to the Forest Land and Resource Management Plan which provides the overall guidance for management activities by specifying the goals and objectives, desired future condition, management area direction, and standards and guidelines. The proposed project is within Management Area 1—General Forest Direction, and Management Area 7A—Wood Production and Utilization. The desired future conditions listed for Management Area 7A include:

(1) Create and maintain nearly equal areas of seedlings and saplings, poletimber, immature sawtimber and mature sawtimber.

(2) Create and maintain stand conditions that will minimize growth loss and mortality from insects and diseases.

(3) Convert slow growing stands of mature sawtimber to young, thrifty stands of desirable species.

A reasonable range of alternatives will be considered. One of these will be the "no action" alternative in which the proposed action would not be implemented, but current management activities would continue (i.e., dispersed recreation, livestock grazing, fuelwood gathering, etc.). Other alternatives will examine various silvicultural and management options designed to

achieve integrated resource management goals. The Forest Service will analyze and document the direct, indirect and cumulative environmental effects of the alternatives. The EIS will also include site specific mitigation measures.

Public participation is important at several points during the analysis. The first point is during this scoping process where the Forest Service is seeking information, comments, and assistance from Federal, State, and local agencies and other individuals and organizations who may be interested in or affected by the proposed action. Information gained during scoping for the 1985 Environmental Assessment will also be used in the analysis. This combined input will be used in the preparation of the draft environmental impact statement (DEIS). Written comments should be submitted by May 15, 1990, to be considered in the DEIS. The scoping process includes: (1) Identifying potential issues and concerns, (2) Identifying issues and concerns to be analyzed in depth, (3) Eliminating insignificant issues and concerns or those which have been covered by a relevant previous environmental analysis, (4) Exploring additional alternatives, (5) Identifying potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).

The Draft Environmental Impact Statement (DEIS) is expected to be available for public review by November 1990. The comment period on the DEIS will be 45 days from the date the EPA's notice of availability appears in the **Federal Register.**

The Forest Service believes it is important to give reviewers notice, at this early stage, of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts the agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.O. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day DEIS comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the DEIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

The Final Environmental Impact Statement is expected to be published by April 1991.

Hugh C. Thompson, Forest Supervisor, Dixie National Forest is the responsible official.

Dated: March 23, 1990.

Rollo H. Brunson,

Acting Forest Supervisor, Dixie National Forest, P.O. Box 580, Cedar City, UT 84721–0580.

[FR Doc. 90–7216 Filed 3–28–90; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Automated Manufacturing Equipment Technical Advisory Committee; Closed Meeting

A meeting of the Automated Manufacturing Equipment Technical Advisory Committee will be held April 18, 1990, 9:30 a.m. in the Herbert C. Hoover Building, room 1092, 14th Street & Pennsylvania Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to automated manufacturing equipment and related technology. The Committee will meet only in Executive Session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on January 5, 1990, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C., 552b(c)(l) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6628, U.S. Department of Commerce, Washington, DC 20230. For further information, contact Lee Ann Carpenter on (202) 377–2583.

Dated: March 23, 1990.

Ruth D. Fitts,

Acting Director, Technical Advisory Committee Unit.

[FR Doc. 90–7134 Filed 3–28–90; 8:45 am]

BILLING CODE 3510-DT-M

Bureau of Export Administration Materials Technical Advisory Committee; Closed Meeting

A meeting of the Materials Technical Advisory Committee will be held April 17, 1990, at 10:30 a.m., in the Herbert C. Hoover Building, room 1092, 14th Street and Constitution Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to materials and or technology.

The Committee will meet only in Executive Session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on May 13, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or

portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6628, U.S. Department of Commerce, Washington, DC. For further information, call Ruth D. Fitts at 202–377–4959.

Dated: March 23, 1990.

Ruth D. Fitts,

Acting Director, Technical Advisory Committee Unit, Office of Technology and Policy Analysis.

[FR Doc. 90–7129 Filed 03–28–90; 8:45 am]

BILLING CODE 3510–DT–M

MCTL Implementation Technical Advisory Committee; Partially Closed Meeting

A meeting of the MCTL Implementation Technical Advisory Committee will be held April 25, 1990 at 9:30 a.m., in the Herbert C. Hoover Building, room 1617–F, 14th Street and Constitution Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis in the implementation of the Militarily Critical Technologies List (MCTL) into the Export Administration Regulations as needed.

Agenda: General Session

1. Opening Remarks by the Chairman.
2. Introduction of Members and Visitors.
3. Presentation of Papers or Comments by the Public.
4. Working Group Reports:
   (a). Decontrol of Reexports from COCOM.
   (b). List Purge.
   (c). TAC Utilization and List Review Process.
   (d). Implementation of Decontrol Mandates.

Executive Session

5. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control programs and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, in order to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that you forward your public presentation materials two weeks prior to the meeting to the below listed address: Ms. Ruth D. Fitts, U.S. Department of Commerce/BXA, Office of Technology & Policy Analysis, 14th & Constitution Avenue, NW., room 4069A, Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 13, 1989, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittee thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes call Ruth D. Fitts, 202–377–4959.

Dated: March 23, 1990.

Ruth D. Fitts,

Acting Director, Technical Advisory Committee Unit, Office of Technology and Policy Analysis.

[FR Doc. 90–7130 Filed 3–28–90; 8:45 am]

BILLING CODE 3510–DT–M

Foreign-Trade Zones Board

[Order No. 466]

Approval for Expansion of Foreign-Trade Zone 32, Dade County, FL, Within the Miami Customs Port of Entry

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the Foreign-Trade Zones Board Regulations (15 CFR part 400), the Foreign-Trade Zones Board (the Board) adopts the following order:

Whereas, the Greater Miami Foreign-Trade Zone, Inc., Grantee of Foreign-Trade Zone No. 32, has applied to the Board for authority to expand its general-purpose zone to include an industrial park within the Beacon Centre development, adjacent to the Miami International Airport in Dade County, Florida, within the Miami Customs port of entry, and to relinquish the previously approved Homestead expansion site (Board Order 184, 47 FR 10612);

Whereas, the application was accepted for filing on June 26, 1989, and notice inviting public comment was given in the **Federal Register** on July 6, 1989 (FTZ Docket 10–89, 54 FR 28454);

Whereas, an examiners committee has investigated the application in accordance with the Board's regulations and recommends approval;

Whereas, the expansion is necessary to improve and expand zone services in the Miami area; and,

Whereas, the Board has found that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, Therefore, the Board hereby orders:

That the Grantee is authorized to expand its zone and relinquish the Homestead site in accordance with the application filed June 26, 1989. The grant does not include authority for manufacturing operations, and the Grantee shall notify the Board for approval prior to the commencement of any manufacturing or assembly operations. The authority given in this Order is subject to settlement locally by the District Director of Customs and the District Army Engineer regarding compliance with their respective requirements relating to foreign-trade zones.

Signed at Washington, DC, this 20th day of March, 1990.

Eric I. Garfinkel,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest: John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 90–7132 Filed 3–28–90; 8:45 am]

BILLING CODE 3510–DS–M

[Docket 11–90]

Foreign-Trade Zone 78—Nashville, TN; Application for Subzone; Form Rite Automotive Tubing Parts Plant, Hawkins County, TN

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Metropolitan Nashville Port Authority, grantee of FTZ 78, requesting special-purpose subzone status for the automotive tubing components manufacturing plant of Form Rite Corporation (subsidiary of FAH Holdings, Ltd., of Canada), in Hawkins County, Tennessee. The application was submitted pursuant to

the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on March 2, 1990.

Form Rite Corporation (FRCorp) is planning to establish a production facility at Building "C" on a 9-acre parcel within the Phipps Bend Joint Venture Industrial Park, some 9 miles southwest of Kingsport, Hawkins County, Tennessee. The site is adjacent to Subzone 78D at the nuclear power equipment storage facility of Global Power Company, formerly a TVA facility. FRCorp will use the facility to produce steel tubing components for automobiles, including power steering parts, transmission and engine oil cooler lines, and transmission oil filler tubes. The company, sources the steel tubing (¼–½ inches in diameter) from affiliated plants in Canada. Many of the other components such as fittings and seals would be purchased from U.S. suppliers.

FRCorp's Canadian affiliate currently exports the finished auto components to the United States duty-free under the U.S./Canadian Automotive Products Trade Agreement (APTA). The steel tubing to be used at the new U.S. plant would be subject to a 6.4 percent duty rate because it is not at a sufficiently advanced stage of processing to be considered an auto part under the APTA. Zone procedures would allow FRCorp to defer Customs entry on the steel tubing until it is made into auto components, which then could be entered duty-free as an APTA product. The applicant indicates that the savings are an essential factor in its plans to locate the plant in the United States. Zone procedures would be used during the 8 years that remain prior to full implement of the U.S. Canadian Free Trade Agreement.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Joel Mish, District Director, U.S. Customs Service, South Central Region, 423 Canal Street, New Orleans, Louisiana 70130; and Colonel James P. King, District Engineer, U.S. Army Engineer District Nashville, P.O. Box 1070, Nashville, Tennessee 37202.

Comments concerning the proposed subzone are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before May 7, 1990.

A copy of the application and accompanying exhibits will be available during this time for public inspection at each of the following locations:

U.S. Department of Commerce, District Office, 404 James Robertson Parkway, Nashville, Tennessee 38103–1505

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th and Pennsylvania Avenue, NW., Room 2835, Washington,DC 20230

Dated: March 22, 1990.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 90–7131 Filed 3–28–90; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-570-506]

Porcelain-on-Steel Cooking Ware From the People's Republic of China; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On November 13, 1989, the Department of Commerce published the preliminary results of its antidumping duty administrative review on porcelain-on-steel cooking ware from the People's Republic of China. The review covers Clover Enamelware Enterprise Ltd., China, and Lucky Enamelware Factory Ltd., Hong Kong, a manufacturer and its related third-country reseller in Hong Kong of this merchandise to the United States, and the period December 1, 1987 through November 30, 1988.

We gave interested parties an opportunity to comment on our preliminary results. We received no comments. The final results of review are unchanged from those presented in the preliminary results.

EFFECTIVE DATE: March 29, 1990.

FOR FURTHER INFORMATION CONTACT: Sheila E. Forbes or Robert J. Marenick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–5255.

SUPPLEMENTARY INFORMATION:

Background

On November 13, 1989, the Department of Commerce ("the Department") published in the **Federal Register** (54 FR 47248) the preliminary results of its administrative review of the antidumping duty order on porcelain-on-steel cooking ware ("POS cooking ware") from the People's Republic of China ("PRC") (51 FR 43414, December 2, 1986). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of POS cooking ware, including tea kettles, which do not have self-contained electric heating elements. All of the foregoing are constructed of steel and are enameled or glazed with vitreous glasses. During the review period, such merchandise was classifiable under items 654.0815, 654.0824, and 654.0827 of the Tariff Schedules of the United States Annotated ("TSUSA"). The merchandise is currently classifiable under HTS item 7323.94.00. The HTS and TSUSA item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the shipments of one manufacturer in the PRC, Clover Enamelware Enterprise Ltd., and its related third-country reseller in Hong Kong, Lucky Enamelware Factory Ltd., which exported the POS cooking ware to the United States, and the period December 1, 1987 through November 30, 1988.

Final Results of the Review

We invited interested parties to comment on the preliminary results. We received no comments. Based on our analysis, the final results of review are the same as those presented in the preliminary results of review, and we determine that the following margin exists for the period December 1, 1987 through November 30, 1988:

Manufacturer/third-country reseller	Margin (percent)
Clover Enamelware Enterprise Ltd./Lucky Enamelware Factory Ltd. (Hong Kong)	66.65

The Department will instruct the Customs Service to assess antidumping duties at the above rate on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins shall be required. For any future entries of this merchandise from a new exporter, not covered in this administrative review,

whose first shipments occurred after November 30, 1988, and who is unrelated to any reviewed firm, a cash deposit of 66.65 percent shall be required. For any shipments from the remaining known manufacturer/exporters not covered in this review, a cash deposit shall be required at the rates published in the antidumping duty order for each of those firms (51 FR 43414, December 2, 1986).

These deposit requirements are effective for all shipments of porcelain-on-steel cooking ware from the People's Republic of China entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)), and § 353.22a of the Commerce Department's regulations (19 CFR 353.22a (1989)).

Dated: March 22, 1990.

Lisa B. Barry,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-7195 Filed 3-28-90; 8:45 am]

BILLING CODE 3510-DS-M

[A-489-501]

Certain Standard Welded Carbon Steel Pipes and Tubes From Turkey

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to a request by the petitioner, the Standard Pipe Subcommittee of the Committee on Pipe and Tube Imports (CPTI), the Department of Commerce has conducted an administrative review of the antidumping duty order on certain standard welded carbon steel pipes and tubes from Turkey. The review covers one manufacturer/exporter of this merchandise to the United States and the period May 1, 1987 through April 30, 1988. The review indicates dumping margins of 1.66 percent for the firm during the period.

As a result of the review the Department has preliminarily determined to assess antidumping duties equal to the calculated differences between United States price and foreign market value.

We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: March 29, 1990.

FOR FURTHER INFORMATION CONTACT: Dennis U. Askey or John Kugelman, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2923/3601.

SUPPLEMENTARY INFORMATION:

Background

On October 11, 1988, the Department of Commerce (the Department) published in the **Federal Register** (53 FR 39636) the final results of its last administrative review of the antidumping duty order on certain standard welded carbon steel pipe and tube products from Turkey. The petitioner, CPTI, requested in accordance with 19 CFR 353.53a(a) (1988) that we conduct an administrative review. We published a notice of initiation of the review on June 29, 1988 (53 FR 24471). The Department is now conducting that administrative review in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act).

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s).

Imports covered by this review are shipments of certain Turkish welded carbon steel pipe and tube products with an outside diameter of 0.375 inch or more but not over 16 inches, of any wall thickness, classifiable during this review period under Tariff Schedules of the United States Annotated items 610.3231, 610.3234, 610.3242, 610.3243, 610.3252, 610.3254, 610.3256, 610.3258, and 610.4925. These products are currently classifiable under HTS items 7306.30.50 and 7306.30.10. These products, commonly referred to in the industry as standard pipe or tube, are produced to various American Society for Testing and Materials (ASTM) specifications, most notably A-120, A-53, or A-135.

The review covers one manufacturer/exporter to the United States of certain Turkish standard welded carbon steel pipes and tubes, the Borusan Group, and the period May 1, 1987 through April 30, 1988.

United States Price

In calculating United States price the Department used purchase price, as defined in section 772 of the Tariff Act. Purchase price was based on packed C&F duty paid and duty unpaid, or CIF duty paid and duty unpaid, prices to unrelated purchasers in the United States. We made adjustments, where applicable, for brokerage fees, foreign inland freight, ocean freight, marine insurance, port and handling charges, countervailing duties, and U.S. import duties.

Borusan claims an adjustment for duty drawback and a "guarantee fee" to be added to United States price. Borusan weight-averaged the exempted import duties and guarantee fees over its U.S. sales throughout the entire review period. However, on May 21, 1987, three weeks into this review period, the Turkish government abolished all import duties and fees, including the guarantee fee, on imported hot-rolled coil. Since Borusan did not indicate the total value of raw materials imported prior to or subsequent to the abolition of the import duties, we used the best information available for determining duty drawback expenses. We attributed Borusan's duty drawback expenses to U.S. sales which occurred prior to May 21, 1987, and attributed zero duty drawback expenses to U.S. sales after that date.

The guarantee fee is a deposit paid to the Government of Turkey by Borusan for imported raw materials (hot-rolled coil) used to produce these pipes and tubes. It is equal to 7 percent of the value of the letter of credit (L/C) used for the importation of the raw materials. The deposit is held by the Turkish government for the life of the L/C and is refunded once payment of the L/C is made. During the review period, imports used in all pipes and tubes exported to the United States were exempt from the guarantee fee.

Because Borusan must pay the guarantee fee on imports used in producing pipes and tubes for sale in the home market, Borusan claims an adjustment is appropriate either under 19 U.S.C. 1677a(d)(1)(b) as duty drawback or, alternatively, under 19 U.S.C. 1677b(a)(4)(B), as a difference in circumstances of sale. However, we have no information about the value of L/Cs used to purchase imported raw material either prior to or subsequent to the abolition of the fees, and thus we were unable to quantify the claimed adjustment.

No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value, the Department used home market price, as defined in section 773 of the Tariff Act, since sufficient quantities of such or similar merchandise were sold in the home market to provide a basis for comparison. Home market price was based on the packed, ex-factory or delivered price to related and unrelated purchasers in the home market. We did not consider sales to related parties that were not at arm's length. Where applicable, we made adjustments for inland freight, discounts, and differences in credit expenses, physical characteristics of the merchandise, and packing costs. No other adjustments were claimed or allowed.

Preliminary Results of Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine the margin to be:

Manufacturer	Time period	Margin (percent)
Borusan	5/1/87–4/30/88	1.66

Interested parties may submit case briefs on these preliminary results within 30 days of the date of publication of this notice, may request disclosure within 5 days of the date of publication, and may request a hearing within 10 days of publication. Any hearing, if requested, will be held as early as convenient for the parties but not later than 44 days after the date of publication of this notice or the first workday thereafter. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 7 days after submission of the case briefs. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any case or rebuttal briefs or at a hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties of 1.66 percent shall be required for all shipments by Borusan. For any shipments of this merchandise, manufactured or exported by the remaining known manufacturers and/or exporters not covered in this review, the cash deposit will continue to be at the rate published in the final results of review for those firms (53 FR 39632, October 11, 1988).

For any future entries by a manufacturer or exporter not covered in this or prior reviews, whose first shipments occurred after April 30, 1988 and who is unrelated to the reviewed firm or any previously reviewed firm, a cash deposit of 1.66 percent shall be required. These deposit requirements are effective for all shipments of certain Turkish standard welded carbon steel pipe and tube products entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22 (1989).

Dated: March 22, 1990.

Lisa B. Barry,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90–7196 Filed 3–28–90; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico and South Atlantic Fishery Management Councils will hold a joint public meeting on April 10, 1990, of their Scientific and Statistical Committees (SSCs), at the Embassy Suites Hotel, 4400 West Cypress, Tampa, FL. The SSCs will review the stock assessment for mackerel, and recommend a total allowable catch for the Gulf and Atlantic groups of king and Spanish mackerel. The meeting will begin at 8 a.m., and adjourn at noon.

For more information contact Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881, Tampa, FL; telephone: (813) 228–2815.

Dated: March 23, 1990.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90–7154 Filed 3–28–90; 8:45 am]

BILLING CODE 3510–22–M

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council will hold public meetings on April 10–11, 1990, of its Scientific and Statistical Committee (SSC) at the Embassy Suites Hotel, 4400 West Cypress, Tampa, FL. The SSC will review the Red Snapper Stock Assessment and Assessment Group Reports; review the definitions developed at the overfishing workshop for the shrimp, spiny lobster, and stone crab fisheries, and review the maximum sustainable yield for the Gulf Shark Amendment.

The reef fish session will be held on April 10 from 1 p.m., to 5 p.m. The shrimp, spiny lobster, and stone crab session will begin on April 11 at 8 a.m. and be followed by the shark session at 3 p.m., which will adjourn at 5 p.m.

For more information contact Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881, Tampa, FL; telephone: (813) 228–2815.

Dated: March 23, 1990.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90–7155 Filed 3–28–90; 8:45 am]

BILLING CODE 3510–22–M

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council will hold a public meeting on April 17–18, 1990, of its Reef Fish Advisory Panel at the Gulf of Mexico Fishery Management Council's office (address below). On April 17 the Panel will begin its meeting at 1 p.m., and recess at 5 p.m. On April 18 the meeting will reconvene at 8 a.m., and adjourn at noon. The Panel will review the Red Snapper Stock Assessment and Assessment Group Reports.

For more information contact Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881, Tampa, FL; telephone: (813) 228–2815.

Dated: March 23, 1990.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90–7156 Filed 3–28–90; 8:45 am]

BILLING CODE 3510–22–M

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council will hold a public meeting on April 18, 1990, of its Mackerel Advisory Panel at the Gulf of Mexico Fishery Management Council's office (address below). The meeting will begin at 1 p.m., and adjourn at 5 p.m. The Panel will review the stock assessment for mackerel, and recommend a total allowable catch for the Gulf and Atlantic groups of king and Spanish mackerel.

For more information contact Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881, Tampa, FL; telephone: (813) 228–2815.

Dated: March 23, 1990.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90–7157 Filed 3–28–90; 8:45 am]

BILLING CODE 3510–22–M

North Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council's Ad Hoc Bycatch Committee will hold a public meeting on March 28–29, 1990, at 11 a.m., p.s.t., at the Alaska Fisheries Science Center, National Marine Fisheries Service, 7600 Sand Point Way NE., Building 4, room 2039, Seattle, WA. The Committee will hear a report from the groundfish plan teams on bycatch management measures that could be analyzed and implemented for the 1991 fisheries. The report will be based on earlier recommendations for proposals made by the bycatch committee on March 14–15. The teams will determine if the proposals are sufficient for comprehensive bycatch management, if data exist to analyze the proposals, and whether the analysis can be completed by June. Following the team report, the bycatch committee will develop a recommended course of action for the Council to adopt at its April 23–27 meeting in anchorage, Alaska.

For more information contact Hal Weeks, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99501; Telephone: (907) 271–2809.

Dated: March 27, 1990.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90–7331 Filed 3–28–90; 8:45 am]

BILLING CODE 3510–22–W

National Technical Information Service

Prospective Grant of Exclusive Patent License

This is notice in accordance with 15 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Technical Information Service (NTIS), U.S. Department of Commerce, is contemplating the grant of an exclusive license in the United States to practice the invention embodied in U.S. Patent 4,026,849, "Composite Compositions from Graft Polymerized Rigid Fillers", to Agricultural Utilization Research Institute, having a place of business at Crookston, Minnesota. The patent rights in this invention have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The invention relates to the preparation of filled thermoplastics, in particular to the graft polymerization of thermoplastic polymers onto and within the interstices of various rigid fillers to give filler-plastic combinations which can be processed by conventional methods.

The availability of the invention for licensing was published in the **Federal Register** on March 3, 1976. A copy of the patent may be purchased from the Commissioner of Patents, Washington, DC 20231. Inquiries, comments and other materials relating to the contemplated license must be submitted to Douglas J. Campion, Center for Utilization of Federal Technology, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Center for Utilization of Federal Technology, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 90–7119 Filed 3–28–90; 8:45 am]

BILLING CODE 3510–04–M

Government-Owned Inventions; Availability for Licensing

March 16, 1990.

U.S. Patent 4,006,932, "Inflatable Drag Reducer for Land Vehicles" is owned by the Department of Transportation of the U.S. Government and is available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. The patent describes and claims a transport vehicle with a front end that leads the vehicle during normal movement thereof and a substantially planar surfaced rear end that trails the vehicle during such movement. Mounted on the rear end is an inflatable enclosure that when inflated possesses convergent contoured surfaces that extend from the edges of the rear end's planar surface. An inflation mechanism is operable by a driver of the vehicle to inflate the enclosure and thereby reduce the effects of base drag during relatively high speed movement of the vehicle. Also operable by the driver is a deflation mechanism that can be operated to deflate the enclosure into a stowed position when the vehicle is not in use or operating at low speeds in confined areas.

Licensing information may be obtained by writing to: National Technical Information Service, Center for Utilization of Federal Technology—Patent Licensing, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151. A copy of the patent may be obtained from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, DC 20231.

Douglas J. Campion,

Associate Director, Center for Utilization of Federal Technology—Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 90–7167 Filed 3–28–90; 8:45 am]

BILLING CODE 3510–04–M

DEPARTMENT OF DEFENSE

Department of the Army

Military Personnel Property Symposium; Meeting

AGENCY: Military Traffic Management Command, Military Personnel Property Symposium, Department of the Army, DOD.

ACTION: Notice of Open Meeting, Military Personnel Property Symposium.

SUMMARY: The purpose of the symposium is to provide an open discussion and free exchange of ideas with the public on procedural changes to the Personal Property Traffic Management Regulation, DoD 4500.34R, and the handling of other matters of mutual interest concerning the Department of Defense Personal Property Shipment and Storage Program.

All interested persons desiring to submit topics to be discussed should contact the Commander, Military Traffic Management Command, ATTN: MTPP-M, at telephone number (703) 756-1600, between the hours of 0800—1500. Topics to be discussed should be received on or before 3 May 1990.

DATES: This meeting will be held on 17 May 1990 at the Sheraton Crystal City Hotel, Arlington, Virginia and will convene at 0930 hours and adjourn at approximately 1600 hours.

FOR FURTHER INFORMATION CONTACT: Francis A. Galluzzo (Acting Director, MTPP), (703) 756-1140, Military Traffic Management Command, 5611 Columbia Pike, Falls Church, VA 22041-5050.

Kenneth L. Denton,

Alternate Army Liaison Officer With the Federal Register.

[FR Doc. 90-7170 Filed 3-28-90; 8:45 am]

BILLING CODE 3710-08-M

Department of the Navy

Board of Visitors to the United States Naval Academy; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Board of Visitors to the United States Naval Academy will meet 23 April 1990, at the U.S. Naval Academy, Annapolis, Maryland. The session, which is open to the public, will commence at 8:30 a.m. and terminate at 11:45 a.m., 23 April 1990, in room 301, Rickover Hall.

The purpose of the meeting is to make inquiry as the Board shall deem necessary into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, and academic method of the Naval Academy.

For further information concerning this meeting contact: Captain John W. Renard, U.S. Navy, Retired, Secretary to the Board of Visitors, Dean of Admissions, United States Naval Academy, Annapolis, Maryland 21402-5017.

Dated: March 19, 1990.

Sandra M. Kay,

Alternate Federal Register Liaison Officer.

[FR Doc. 90-7168 Filed 3-28-90; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before April 30, 1990.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to George P. Sotos, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: George P. Sotos, (202) 732-2174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Acting Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from George Sotos at the address specified above.

Dated: March 23, 1990.

George P. Sotos,

Acting Director, for Office of Information Resources Management.

Office of Educational Research and Improvement

Type of Review: Reinstatement.
Title: Evaluation of the Dropout Statistics Field Test.
Frequency: One Time.
Affected Public: Individuals or households; State or local governments.
Reporting Burden:
Responses: 700.
Burden Hours: 1144.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This study will evaluate the NCES Field Test of procedures for collecting dropout statistics and will survey SEAs and LEAs to validate data on School Leavers and assess training requirements and barriers to collecting data for the Common Core of Data.

Office of Elementary and Secondary Education

Type of Review: New.
Title: Chapter 1—Migrant Education Program—Recordkeeping Requirements for LEAS and SEAs Operating Chapter 1, ECIA Projects.
Frequency: Annually.
Affected Public: State or local governments.
Reporting Burden:
Responses:
Burden Hours:
Recordkeeping Burden:
Recordkeepers: 2156.
Burden Hours: 3.
Abstract: This information should be maintained by SEAs and LEAs in order to be in compliance with the Chapter 1 Migrant Program.

Office of Management

Type of Review: New.

Title: Survey on Student Rights in Research, Experimental Activities, and Testing.

Frequency: One Time.

Affected Public: State or local governments.

Reporting Burden:

Responses: 50.

Burden Hours: 2.33.

Recordkeeping Burden:

Recordkeepers: 0.

Burden Hours: 0.

Abstract: The information collected is to carry out the purpose of the "Protection of Pupil Rights Amendment" under section 439 of the GEPA Act. The information will aid the Department in resolving complaints under the Act.

[FR Doc. 90-7140 Filed 3-28-90; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Bonneville Power Administration

Cost Recovery Adjustment Clause

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of possible rate adjustment.

SUMMARY: In accordance with provisions of the power sales contracts of BPA's customers, notice must be given 9 months prior to any change in rates. In order to comply with that provision, BPA must now announce the potential possibility of a Cost Recovery Adjustment Clause (CRAC) rate adjustment on January 1, 1991.

This announcement should in no way be construed to mean that BPA expects the CRAC adjustment to be implemented. Rather, this notice only enables BPA to make the adjustment if BPA finds it necessary. Determining whether or not a CRAC adjustment can be made depends on the application of the CRAC formula described in section III.C.5.c(1)(b) of the General Rate Schedule Provision section of the 1989 Wholesale Power Rate Schedules and General Rate Schedule Provisions. The formula will be applied to BPA's official audited financial statements for the fiscal year 1990.

Although notice is given at this time, the determination that CRAC could be implemented will not be made until November 1990, after the close of the 1990 fiscal year. BPA's Administrator may decide to implement an adjustment only after completion of a public process that will be announced in November 1990. The Administrator may decide not to implement an adjustment without undergoing a public process.

FOR FURTHER INFORMATION CONTACT: Ms. Teresa M. Cunningham, Public Involvement Office-ALP, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212, or at 503-230-3478. BPA has toll-free numbers available: Oregon callers may use 800-452-8429; callers in California, Idaho, Montana, Nevada, Utah, Washington, and Wyoming may use 800-547-6048. Information also may be obtained from:

Mr. George E. Gwinnutt, Lower Columbia Area Manager, Suite 243, 1500 NE Irving Street, Portland, Oregon 97232, 503-230-4551.

Mr. Robert N. Laffel, Eugene District Manager, Room 206, 211 East Seventh Street, Eugene, Oregon 97401, 503-687-6952.

Mr. Wayne R. Lee, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509-353-2518.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406-329-3060.

Mr. Ronald K. Rodewald, Wenatchee District Manager, Room 307, 301 Yakima Street, Wenatchee, Washington 98801, 509-662-4377, extension 379.

Mr. Terence G. Esvelt, Puget Sound Area Manager, Suite 400, 201 Queen Anne Avenue, Seattle, Washington 98109-1030, 206-442-4130.

Mr. Thomas V. Wagenhoffer, Snake River Area Manager, 101 West Poplar, Walla Walla, Washington 99362, 509-522-6225.

Mr. Richard J. Itami, Idaho Falls District Manager, 1527 Hollipark Drive, Idaho Falls, Idaho, 208-523-2706.

Mr. Thomas H. Blankenship, Boise District Manager, Room 494, 550 West Fort Street, Boise, Idaho 83724, 208-334-9137.

SUPPLEMENTARY INFORMATION: BPA's 1989 *General Rate Schedule Provisions* include the CRAC applicable to the Priority Firm Power (Exchange and Preference) (PF-89), Industrial Firm Power (IP-89), Variable Industrial Power (VI-87), Firm Capacity (CF-89), and New Resource Firm Power (NR-89) rate schedules. The CRAC formula provides for an adjustment to these applicable rates of up to 10 percent based on BPA's fiscal year 1990 financial performance. If this provision is implemented, adjusted rates will be in effect during the period January 1, 1991, through September 30, 1991.

Issued in Portland, Oregon, on March 14, 1990.

John S. Robertson,

Deputy Administrator.

[FR Doc. 90-7221 Filed 3-28-90; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER90-258-000 et al.]

West Texas Utilities Co. et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. West Texas Utilities Co.

[Docket No. ER90-258-000]

March 20, 1990.

Take notice that on March 15, 1990, West Texas Utilities Company (WTU) submitted for filing forty-two (42) executed Delivery Point and Service Specifications sheets providing for various minor changes to the Service Agreements between WTU and Brazos Electric Power Cooperative, Inc., Concho Valley Electric Cooperative, Inc., Lighthouse Electric Cooperative, Inc., McCulloch Electric Cooperative, Inc., Southwest Texas Electric Cooperative, Inc. and Taylor Electric Cooperative, Inc., executed under WTU's FERC Electric Tariff, Original Volume No. 1. In addition, WTU states that a total of eight (8) points of delivery have been deleted from WTU contracts with three (3) of these wholesale customers.

WTU states that copies of the filing have been set to the Public Utility Commission of Texas and the affected full requirements wholesale customers.

Comment date: April 4, 1990, in accordance with Standard Paragraph E at the end of this notice.

2. Wisconsin Power & Light Co.

[Docket No. ER90-257-000]

March 20, 1990.

Take notice that on March 14, 1990, Wisconsin Power and Light Company (WPL) tendered for filing a Wholesale Power Agreement dated June 5, 1989, and an Amendment No. thereto dated March 7, 1990, between Wisconsin Public Power, Incorporated SYSTEM (WPPI) and (WPL). WPL states that this agreement and its amendment replace the previous agreement between the two parties which was dated February 14, 1983, and is designated Rate Schedule No. 132.

The purpose of this agreement and amendment is to replace and extend the previous agreement between WPL and WPPI. Service under this Wholesale Power Agreement will be in accordance with standard WPL rate schedule W-1.

WPL requests that an effective date be assigned concurrent with the date of approval by the Commission. WPL

states that copies of the agreement, the amendment and the filing have been provided to WPPI and to the Public Service Commission of Wisconsin.

Comment date: April 4, 1990, in accordance with Standard paragraph E at the end of this notice.

3. Wisconsin Electric Power Co.

[Docket No. ER90-256-000]

March 20, 1990.

Take notice that Wisconsin Electric Power Company (Wisconsin) tendered for filing on March 13, 1990, a letter agreement with the Badger Power Marketing Authority of Wisconsin, Inc. (BMPA). The agreement clarifies the administration of Service Agreement No. 25, which was accepted by the Commission in Docket No. ER89-54.

Wisconsin Electric respectfully requests waiver of the Commission's sixty day notice requirements in order to allow an effective date of July 28, 1989. Wisconsin Electric is authorized to state that BPMA joins in the requested effective date.

Copies of the filing have been served on BPMA and the Public Service Commission of Wisconsin.

Comment date: April 4, 1990, in accordance with Standard Paragraph E at the end of this notice.

4. Pacific Gas and Electric Co.

Docket No. ER90-259-000

March 21, 1990.

Take notice that on March 19, 1990, Pacific Gas and Electric Company (PG&E) tendered for filing a rate settlement agreement to Service Agreement No. 9 under FPC Electric Tariff, Original Volume 2 (commonly referred to as Rate Schedule FERC No. R-1) with the City of Redding (Redding).

On December 19, 1988 and March 22, 1989, the California Public Utilities Commission (CPUC) issued Decision Nos. 88-12-083 and 89-03-062, respectively, which ratified a settlement reached by certain parties to the CPUC's Diablo Canyon Nuclear Power Plant (Diablo) ratemaking proceeding (CPUC 1988 Diablo Settlement). The CPUC 1988 Diablo Settlement provides a performance-based mechanism and methodology for PG&E's recovery of costs related to the construction, ownership and operation of Diablo.

PG&E's rate settlement agreement (agreement) with Redding establishes a rate treatment for Diablo which is consistent with the CPUC 1988 Diablo Settlement. In addition, the agreement increases the non-FCA Energy Charge by $0.003 per kilowatt-hour to a new rate of $0.011 per kilowatt-hour.

PG&E has requested that the proposed rate settlement agreement be allowed to become effective as of January 1, 1990.

Copies of this filing were served upon Redding, Western Area Power Administration and the CPUC.

Comment date: April 5, 1990, in accordance with Standard Paragraph E at the end of this notice.

5. PacifiCorp, doing business as Pacific Power & Light and Utah Power & Light

Docket No. ER90-261-000

March 21, 1990.

Take notice that PacifiCorp, doing business as Pacific Power & Light and Utah Power & Light (PacifiCorp), on March 19, 1990, tendered for filing, in accordance with 18 C.F.R. § 35.13 of the Commission's Rules and Regulations, a Revised Exhibit B, dated October 1, 1989 to the May 29, 1981 Transmission Agreement (PacifiCorp/Pacific Power & Light Company Rate Schedule FERC No. 213), between PacifiCorp, Deseret Generation & Transmission Cooperative (Deseret), and Bridger Valley Electric Association, Inc. (Bridger Valley).

Exhibit B to the Transmission Agreement is revised annually in accordance with Article 12(ii) of the Transmission Agreement, and specifies the projected maximum integrated demand in kilowatts which Deseret desires to have transmitted to Bridger Valley for a four year rolling period.

PacifiCorp respectfully requests that a waiver of the prior notice requirements of 18 CFR 35.3 be granted pursuant to 18 CFR 35.11 of the Commission's Rules and Regulations and that an effective date of October 1, 1989 be assigned, this date being consistent with the provisions of Article 12(ii) of the Transmission Agreement.

Copies of this filing were supplied to Deseret, Bridger Valley, and the Wyoming Public Service Commission.

Comment date: April 5, 1990, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-7142 Filed 3-28-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP90-990-000, et al.]

Transwestern Pipeline Company, et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Transwestern Pipeline Co.

[Docket No. CP90-990-000]

March 20, 1990.

Take notice that on March 15, 1990, Transwestern Pipeline Company (Transwestern), 1400 Smith Street, Post Office Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP90-990-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to transport natural gas on behalf of Panda Resources, Inc. (Panda), a marketer of natural gas, under Transwestern's blanket certificate issued in Docket No. CP88-133-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Transwestern proposes to transport on an interruptible basis up to 100,000 MMBtu of natural gas on a peak day, 75,000 MMBtu on an average day and 36,500,000 MMBtu on an annual basis for Panda. Transwestern states that it would perform the transportation service for Panda under Transwestern's Rate Schedule ITS-1. Transwestern indicates that it would receive the gas at any of the receipt points listed in its Transportation Point Catalog and would transport the gas to delivery points in Texas, Oklahoma, New Mexico, and Arizona.

It is explained that the service commenced February 24, 1990, under the automatic authorization provisions of section 284.223 of the Commission's Regulations, as reported in Docket No. ST90-2201. Transwestern indicates that no new facilities would be necessary to provide the subject service.

Comment date: May 4, 1990, in accordance with Standard Paragraph G at the end of this notice.

2. Transcontinental Gas Pipe Line Corp.

[Docket No. CP90–1004–000]

March 20, 1990.

Take notice that on March 19, 1990, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP90–1004–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Transco Energy Marketing Company (Transco Energy), a marketer, under the blanket certificate issued in Docket No. CP88–328–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Transco states that pursuant to a service agreement dated December 15, 1989, under its Rate Schedule IT, it proposes to transport up to 100,000 dekatherms (dt) per day equivalent of natural gas for Transco Energy. Transco states that it would transport the gas from receipt points in Alabama, Georgia, Pennsylvania, New Jersey, onshore and offshore Louisiana, and onshore and offshore Texas, and would redeliver the gas at a delivery point in Texas.

Transco advises that service under § 284.223(a) commenced February 13, 1990, as reported in Docket No. ST90–2007–000. Transco further advises that it would transport 100,000 dt on an average day and 36,500,000 dt annually.

Comment date: May 4, 1990, in accordance with Standard Paragraph G at the end of this notice.

3. Colorado Interstate Gas Co.

[Docket No. CP90–975–000]

March 20, 1990.

Take notice that on March 15, 1990, Colorado Interstate Gas Company, (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP90–975–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide transportation service on behalf of Helmerich and Payne, Inc. (Shipper) under the blanket certificate issued in Docket No. CP86–589–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

CIG states that pursuant to a transportation agreement dated February 1, 1989, it proposes to transport up to 36,000 Mcf of natural gas per day for Shipper. CIG would receive gas from an existing point of receipt on its system in Kansas and redeliver the subject gas, less fuel gas and lost and unaccounted for gas, for the account of Shipper in Beaver County, Oklahoma.

CIG also states that the estimated daily and annual quantities would be 18,500 Mcf and 6,750 Mcf, respectively.

CIG further states that it commenced this service on February 1, 1990, as reported in Docket No. ST90–2069–000.

Comment date: May 4, 1990, in accordance with Standard Paragraph G at the end of this notice.

4. Distrigas of Massachusetts Corp.

[Docket No. CP90–959–000]

March 20, 1990.

Take notice that on March 12, 1990, pursuant to § 157.201 of the Commission's Regulations, Distrigas of Massachusetts Corporation (Applicant) 200 State Street, Boston, Massachusetts, 02109 filed an "Application for Blanket Certificate of Public Convenience and Necessity and Request for Waiver of Regulations". The Applicant seeks authority to make miscellaneous rearrangements of and additions to its facilities to the full extent permitted by subpart F of part 157 of the Commission's Regulations. Additionally, Applicant has requested a waiver of § 157.202(b) of the Commission's Regulations to the extent that section subjects operators of liquified natural gas (LNG) terminalling facilities to more stringent regulatory requirements than those applicable to interstate pipelines resulting in competitive disadvantages for LNG terminal operators, all as more fully set forth in the request on file with Commission and, open to public inspection.

Comment date: April 10, 1990, in accordance with Standard Paragraph F at the end of this notice.

5. Columbia Gas Transmission Corp.

[Docket No. CP90–993–000]

March 20, 1990.

Take notice that on March 15, 1990, Columbia Gas Transmission Corporation (Columbia Gas), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP90–993–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service on behalf of Equitable Resources Marketing Company (Equitable Resources) under its blanket certificate issued in Docket No. CP86–240–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Columbia Gas states that the maximum daily, average daily and annual quantities that it would transport on behalf of Equitable Resources would be 120,000 MMBtu equivalent of natural gas, 96,000 MMBtu equivalent of natural gas and 43,800,000 MMBtu equivalent of natural gas, respectively.

Columbia Gas indicates that in Docket No. ST90–1924–000 filed with the Commission, it reported that transportation service on behalf of Equitable Resources commenced on February 6, 1990 under the 120-day automatic authorization provisions of § 284.223(a).

Comment date: May 4, 1990, in accordance with Standard Paragraph G at the end of this notice.

6. Mississippi River Transmission Corp.

[Docket No. CP90–982–000]

March 20, 1990.

Take notice that on March 14, 1990, Mississippi River Transmission Corporation (MRT), 9900 Clayton Road, St. Louis, Missouri 63124, filed in Docket No. CP90–982–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) and the Natural Gas Policy Act (18 CFR 284.223) for authorization to transport natural gas for Direct Gas Supply Corporation (Direct), a marketer/broker of natural gas, under MRT's blanket certificate issued in Docket No. CP89–1121–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

MRT proposes to transport, on an interruptible basis, up to 25,000 MMBtu of natural gas equivalent per day for Direct pursuant to a transportation agreement dated December 11, 1989, between MRT and Direct. MRT would receive the gas at various existing receipt points in Texas, Louisiana, Arkansas and Illinois and redeliver equivalent volumes, less fuel used, at various existing delivery points in Missouri.

MRT states that the estimated daily and annual volumes are 4,566 MMBtu and 1,666,667 MMBtu, respectively. Service under § 284.223(a) commenced on January 25, 1990, as reported in Docket No. ST90–1946–000, it is stated.

Comment date: May 4, 1990, in accordance with Standard Paragraph G at the end of this notice.

7. Transcontinental Gas Pipe Line Corp.

[Docket No. CP90–1000–000]

March 20, 1990.

Take notice that on March 19, 1990, Transcontinental Gas Pipe Line

Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP90-1000-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Transco Energy Marketing Company (Transco Energy), a marketer, under the blanket certificate issued in Docket No. CP88-328-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Transco states that pursuant to a service agreement dated November 21, 1989, under its Rate Schedule IT, it proposes to transport up to 50,000 dekatherms (dt) per day equivalent of natural gas for Transco Energy. Transco states that it would transport the gas from a receipt point located in Texas and would redeliver the gas at a delivery point also in Texas.

Transco advises that service under § 284.223(a) commenced February 1, 1990, as reported in Docket No. ST90-2162-000. Transco further advises that it would transport 5,000 dt on an average day and 1,825,000 dt annually.

Comment date: May 4, 1990, in accordance with Standard Paragraph G at the end of this notice.

8. Columbia Gas Transmission Corp.

[Docket No. CP90-921-000]

March 20, 1990.

Take notice that on March 6, 1990, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP90-921-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities to be utilized for jurisdictional firm transportation service under part 284 of the Commission's Regulations, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Columbia indicates that Pedricktown Cogeneration Limited Partnership (Pedricktown) and Public Service Electric and Gas Company (PSE&G) have requested that Columbia provide the following services: (1) Up to 6,000 dt equivalent per day of firm transportation service and 1,262,816 of interruptible transportation service for Pedricktown from an existing receipt point on Columbia's system near Dwale in Floyd County, Kentucky, to a point on Columbia's 16-inch pipeline in Gloucester County, New Jersey; and (2) up to 12,500 dt equivalent per day of firm transportation service for PSE&G from a receipt point near Broad Run in Kanawha County, West Virginia, to an interconnection between the facilities of Columbia and PSE&G near West Deptford, New Jersey.

Columbia states that the following facilities are required to provide service to PSE&G and Pedricktown: (1) A point of delivery to South Jersey Gas Company (South Jersey) for Pedricktown consisting of measuring and interconnecting facilities located in Gloucester County, New Jersey; and (2) 5.1 miles of 24-inch pipeline located in Lancaster County, Pennsylvania. It is indicated that such facilities would be constructed during the 1991 construction season. It is further indicated that the subject transportation services would commence for PSE&G and Pedricktown December 1, 1990 and February 1, 1992, respectively.[1]

Columbia indicates that South Jersey would provide downstream transportation for Pedricktown and that the two parties have negotiated a transportation agreement to be filed with the New Jersey Board of Public Utilities in the near future. It is stated that pursuant to this agreement, South Jersey would receive gas from Columbia at the proposed Columbia/South Jersey interconnection for delivery to the Pedricktown facility. It is further stated that PSE&G has requested upstream transportation of gas for delivery to Columbia near Broad Run, Kanawha County, West Virginia. Columbia indicates that no other upstream or downstream transportation service is currently contemplated for either Pedricktown or PSE&G.

Columbia states that Pedricktown would use the subject gas in its cogeneration facility located adjacent to B. F. Goodrich's chemical plant in Salem County, New Jersey. Columbia states that PSE&G would use the subject gas for incremental growth and to provide a diversification of supply sources. Since these transportation services would be provided pursuant to Part 284 of the Commission's Regulations, Columbia is not requesting authorization for such services herein.

Columbia estimates the cost of the proposed facilities to be $4,780,000, which costs would be financed with funds generated from internal sources. It is indicated that Pedricktown would reimburse, or cause to be reimbursed, Columbia for the cost of the Pedricktown delivery point which is estimated to cost $440,000. Columbia estimates that the revenues that would be generated during the first full year of operation would be $1,715,755 and the cost of service during the first full year of operation would be $709,000.

Comment date: April 10, 1990 in accordance with Standard Paragraph F at the end of the notice.

[1] Columbia states that the scheduling of new facilities and services proposed in Columbia's application in Docket No. CP90-678-000 would permit service to PSE&G commencing December 1, 1990, without additional construction. It is explained that service level increases and the proposed construction schedule pending in that application occur over a three-year period (1990-1992) and provide sufficient capacity to provide service to PSE&G for a one-year period commencing December 1, 1990, without additional construction.

9. Mississippi River Transmission Corp.

[Docket No. CP90-981-000]

March 21, 1990.

Take notice that on March 14, 1990, Mississippi River Transmission Corporation (MRT), 9900 Clayton Road, St. Louis, Missouri 63124, filed in Docket No. CP90-981-000 an application pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Centran Corporation (Centran), a marketer/broker of natural gas, under MRT's blanket certificate issued in Docket No. CP89-1121-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

MRT proposes to transport, on an interruptible basis, up to 30,000 MMBtu of natural gas per day for Centran. MRT states that construction of facilities would not be required to provide the proposed service.

MRT further states that the maximum day, average day, and annual transportation volumes would be approximately 30,000 MMBtu, 30,000 MMBtu and 10,950,000 MMBtu respectively.

MRT advises that service under § 284.223(a) commenced January 26, 1990, as reported in Docket No. ST90-1947.

Comment date: May 7, 1990, in accordance with Standard Paragraph G at the end of this notice.

10. ANR Pipeline Company

[Docket No. CP90-998-000]

March 21, 1990.

Take notice that on March 16, 1989, ANR Pipeline Company (ANR) 500 Renaissance Center, Detroit, Michigan 48243 filed in Docket No. CP90-998-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for

authorization to transport natural gas on behalf of Entrade Corporation (Entrade), under the authorization issued in Docket No. CP88–532–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

ANR would perform the proposed interruptible transportation service for Entrade, for the benefit of various companies, pursuant to a transportation agreement dated April 7, 1989. The term of the transportation agreement is for an initial period of 120 days and thereafter until April 30, 1990, and shall continue in effect month-to-month thereafter unless terminated upon 30 days prior written notice. ANR proposes to transport on a peak day up to 100,000 dekatherm; on an average day up to 100,000 dekatherm; and on an annual basis 36,500,000 dekatherm of natural gas for Entrade. ANR states that it would receive the gas at existing points of receipt in located in Louisiana, Oklahoma, Kansas, Texas, and the Offshore Texas and Offshore Louisiana gathering areas and redeliver the gas for the account of Entrade at existing interconnections located in Louisiana. It is alleged that Entrade would pay ANR the effective rate contained in ANR's rate schedule ITS. ANR avers that construction of facilities would not be required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's regulations. ANR commenced such self-implementing service on January 18, 1990, as reported in Docket No. ST90–1845–000.

Comment date: May 7, 1990, in accordance with Standard Paragraph G at the end of this notice.

11. Inter-City Minnesota Pipelines Ltd., Inc.

[Docket No. CP90–973–000]

March 21, 1990.

Take notice that on March 13, 1990, Inter-City Minnesota Pipelines Ltd., Inc. (Inter-City), 245 Yorkland Boulevard, North York, Ontario, Canada M2J 1R1, filed in Docket No. CP90–973–000 an application pursuant to section 7(b) of the Natural Gas Act (NGA) for authorization to abandon its existing Rate Schedules G–1 and SG–1 sales services to Northern Minnesota Utilities (NMU) and the City of Warroad, Minnesota (Warroad), and pursuant to section 3 of the NGA for a certificate of public convenience and necessity authorizing the transportation of Canadian natural gas for NMU and Warroad to replace those existing sales services pursuant to a new Rate Schedule FT–2. In addition, Inter-City requests authorization to substitute ICG Utilities (Ontario) Ltd. (ICG Utilities) under its current T–1 transportation service for the present shipper, ICG Transmission Holdings Ltd. (ICG Transmission), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Inter-City states that it and its only existing sales customers, NMU and Warroad, have agreed that Inter-City will unbundle its services. Once unbundled, Inter-City states that it will no longer be a merchant of gas, but will only act as a transportation conduit between Canadian producers and its existing customers. Accordingly, the existing sales service for NMU and Warroad under Rate Schedules G–1 and SG–1 will be abandoned and replaced with firm transportation under new Rate Schedule FT–2. According to Inter-City, NMU and Warroad have also entered into gas purchase agreements with Western Gas Marketing Limited (Western Gas) in Canada, and into transportation agreements with ICG Transmission to transport the gas from the wellhead to Inter-City's facilities. Inter-City further states that the unbundling will allow it to operate more economically and efficiently and that the proposal is consistent with its customers' wishes.

It is stated that Inter-City currently maintains 26,657 Mcf per day (Mcfd) in contract demand for NMU and 1,000 Mcfd in contract demand for Warroad. However, Inter-City states that in form, NMU purchases all of its supplies from ICG Transmission, while in present substance, both Inter-City and ICG Transmission are transporting conduits for supplies that are priced by direct negotiation between Inter-City's sales customers and the Canadian supplier and ICG Transmission.

Under Precedent Agreements, Inter-City states that it has agreed with NMU and Warroad that it will abandon its existing sales service and convert the services to firm transportation. In place of the existing G–1 and SG–1 sales service to NMU, Inter-City proposes to provide firm transportation of up to 21,063 Mcfd on a firm basis as of the effective date of the unbundling agreements through October 31, 1990, and adjust to contract demand of up to 26,358 Mcfd on a firm basis thereafter, under proposed Rate Schedule FT–2.[1] It is stated that the abandonment of the sales service and minor change in the volumes under the proposed firm transportation service for NMU are both requested by NMU. Additionally, it is stated that in place of the existing SG–1 sales service Inter-City provides Warroad, Inter-City and Warroad have agreed that Inter-City will transport the same volumes of gas (up to 1,000 Mcfd) for Warroad on a firm basis.

Other than the minor volumetric adjustment as of November 1, 1990, for NMU, and conversion of the remaining sales contract demand to firm transportation, Inter-City states that the Precedent Agreements provide for service essentially identical to that provided under the current arrangement. Inter-City states that the major differences are that the minimum bill presently in its sales tariff will be eliminated and Warroad's contract term, which now extends only throuqh November 1, 1992, will be extended to terminate coincidentally with NMU's agreement on November 1, 1995. Additionally, it is stated that NMU and Warroad presently negotiate their gas purchase contracts directly with Western Gas, as agent for TransCanada Pipelines Limited; now they will actually purchase the gas directly.

It is stated that in 1984, the Commission, in the interest of administrative efficiency, granted Inter-City authority to automatically have the requisite authority to transport within Minnesota whatever volumes of gas ERA authorizes it to import/export. Inter-City states that as part of the unbundling, it will not hold import/export authority; instead, shippers on its system will obtain such authority. Inter-City also requests that its existing authorization permitting it to transport authorized volumes of gas apply to whatever volumes of gas are authorized for shippers on its system to import and export.

Inter-City states that it currently transports up to 12,360 Mcfd of gas for ICG Transmission. Inter-City and ICG Transmission propose to substitute ICG Utilities as the shipper of natural gas under this arrangement in place of ICG Transmission. This substitution will, it is stated, permit the concurrent unbundling of ICG Transmission's services and will

[1] Inter-City states that pursuant to a stipulation and agreement filed concurrently in Docket Nos. RP89–14 and RP 89–254, it was agreed that Inter-City will eliminate zones for the purposes of calculating transmission rates and to implement a two part rate structure for SG–1 service. Inter-City states that these changes removed all differences between SG–1 and G–1 rate structures and allow these services to be replaced by a single transportation tariff and rate.

in no way alter the nature of services performed in the United States.

Effective November 1, 1990, Inter-City states that the volumes proposed to be transported for ICG Utilities will increase from 12,360 Mcfd to 28,000 Mcfd. Here, Inter-City requests authority to substitute ICG Utilities as shipper for the original 12,360 Mcfd for the interim period between implementation of the unbundling program and November 1, 1990.

It is stated that the initial rates included in the transportation service agreements between Inter-City and NMU and Warroad for FT–2 service are based on the non-gas portion of Inter-City's Rate Schedules G–1 and SG–1 as of the effective date of unbundling. On approval and acceptance of this application, the applications of assign import/export authority filed with the Department of Energy Office of Fossil Energy and any required Canadian authorizations, Inter-City states that a new FT–2 service and tariff will replace the SG–1 and G–1 services. Inter-City further states that the current Rate Schedule T–1 service provided to ICG Transmission will also be abandoned and FT–1 service to ICG Utilities will be initiated.[2] It is stated that the initial FT–1 rate will be the T–1 rate on the day that T–1 service is abandoned. Inter-City also requests authority to withdraw its existing FERC Original Volume No. 1 and its Original Volume No. 2 upon approval of its proposed First Revised Volume No. 2.

Comment date: April 11, 1990 in accordance with Standard Paragraph F at the end of the notice.

12. Tennessee Gas Pipeline Co.

[Docket No. CP90–996–000]

March 21, 1990.

Take notice that on March 16, 1990, Tennessee Gas Pipeline Company (Tennessee), Post Office Box 2511, Houston, Texas 77252, filed in Docket No. CP90–996–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Chevron U.S.A., Inc. (Chevron), a producer of natural gas, under its blanket authorization issued in Docket No. CP87–115–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Tennessee would perform the proposed interruptible transportation service for Chevron, pursuant to an interruptible transportation service agreement dated September 21, 1989, as amended November 14 and 21, 1989, and February 13, 1990. The transportation agreement is effective for a term of five years and month-to-month thereafter, provided that either party may terminate the agreement at any time upon at least 30 days written notice to the other party. Tennessee proposes to transport 150,000 dekatherms (dt) of natural gas on a peak and average day; and on an annual basis 54,750,000 dt of natural gas for Chevron. Tennessee proposes to receive the subject gas at various existing points of receipt located in Alabama, Louisiana, Offshore Louisiana, Texas and Offshore Texas. The points of delivery are located in the states of Alabama, Connecticut, Louisiana, Mississippi, New York, Ohio, Pennsylvania and Tennessee. Tennessee avers that no new facilities are required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. Tennessee commenced such self-implementing service on February 2, 1990, as reported in Docket No. ST90–2080–000.

Comment date: May 7, 1990, in accordance with Standard Paragraph G at the end of this notice.

13. Mississippi River Transmission Corp.

[Docket No. CP90–978–000]

March 21, 1990.

Take notice that on March 14, 1990, Mississippi River Transmission Corporation (MRT), 9900 Clayton Rd, St. Louis, Missouri 63124, filed in Docket No. CP90–978–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Williams Gas Marketing Company (Williams), a marketer/broker of natural gas, under its blanket authorization issued in Docket No. CP89–1121–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

MRT would perform the proposed interruptible transportation service for Williams, pursuant to an interruptible transportation service agreement dated December 11, 1989. The transportation agreement is effective for a primary term ending December 31, 1990, and shall continue month to month thereafter unless terminated by either party on thirty days written notice. MRT proposes to transport 185,000 MMBtu on a peak and average day; and on an annual basis approximately 67,525,000 MMBtu of natural gas for Williams. MRT proposes to transport the subject gas from receipt points located in Arkansas, Illinois, Louisiana and Texas. MRT proposes to deliver the gas to Williams at various existing points located in Illinois and Missouri.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. MRT commenced such self-implementing service on January 20, 1990, as reported in Docket No. ST90–1917–000.

Comment date: May 7, 1990, in accordance with Standard Paragraph G at the end of this notice.

14. Columbia Gulf Transmission Co.

[Docket No. CP90–994–000]

March 21, 1990.

Take notice that on March 15, 1990, Columbia Gulf Transmission Company, (Columbia Gulf), 3850 West Alabama Avenue, Houston, Texas 77027–5225, filed in Docket No. CP90–994–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Delmarva Power and Light Company (Delmarva) under Columbia Gulf's blanket certificate issued in Docket No. CP86–240–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Columbia Gulf states that it would transport on a firm basis up to 10,270 MMBtu equivalent of natural gas per day for Delmarva under a transportation service agreement dated November 1, 1989. Columbia further states that projected average day and annual quantities would be 8,216 and 3,748,550 MMBtu, respectively. Columbia Gulf indicates that it would receive the natural gas at the outlet side of the Rayne, Louisiana compressor station. Columbia Gulf further indicates that it would redeliver the natural gas at an interconnection of the facilities of Columbia Gulf and Columbia Gas Transmission Corporation in the state of Kentucky. It is stated that no facilities would be constructed to provide the service.

Columbia Gulf states that service under § 284.223(a) of the Commission's

[2] It is stated that in Docket No. CP89–2093, 50 FERC ¶ 61,141 (1990), the Commission approved Rate Schedule T–2 for service by Inter-City to ICG Utilities. However, Rate Schedule FT–1 filed herein is proposed to supersede the T–2 Rate Schedule.

Regulations (18 CFR 284.223 (a)) commenced on November 1, 1989, as reported in Docket No. ST90–1438–000.

Comment date: May 7, 1990, in accordance with Standard Paragraph G at the end of this notice.

15. Southern Natural Gas Co.

[Docket No. CP90–999–000]

March 21, 1990.

Take notice that on March 16, 1990, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202, filed in Docket No. CP90–999–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP88–316–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Southern proposes to transport natural gas for Texican Natural Gas Company (Texican) pursuant to Rate Schedule IT. Southern explains that service commenced January 16, 1990, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST90–1872–000. Southern explains that the peak day quantity would be 30,000 MMBtu, the average daily quantity would be 10,000 MMBtu, and that the annual quantity would be 3,650,000 MMBtu. Southern explains that it would receive natural gas for Texican's account at various receipt points in Offshore Louisiana, Louisiana, Mississippi, Texas, Offshore Texas, and Alabama for delivery at various delivery points in Georgia.

Comment date: May 7, 1990, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 90–7138 Filed 3–28–90; 8:45 am]

BILLING CODE 6717–01–M

Pacific Gas & Electric Co.; Notice Suspending Time To File Response

[Project No. 137–002]

March 22, 1990.

By letter dated September 25, 1989, the Commission Secretary requested that the City of Santa Clara, California (Santa Clara), no later than 90 days from the date it received the letter, file with the Commission either a copy of an executed settlement agreement or information needed by the Commission to determine the amount of compensation that should be paid to Santa Clara by Pacific Gas and Electric Company (PG&E) in this proceeding pursuant to Section 10 of the Electric Consumers Protection Act. By Commission Secretary letter of September 25, 1989, PG&E was informed that, in the event a settlement was not filed, it would have 90 days from its receipt of Santa Clara's response to the September 25, 1989 letter to file a response to Santa Clara's response.

PG&E and Santa Clara requested and received extensions until February 23, 1990, to respond to the Secretary's letters. On February 13, 1990, Santa Clara filed its response to the Secretary's letter. On March 13, 1990, PG&E and Santa Clara jointly filed an offer of settlement. On March 13, 1990, PG&E filed a motion to suspend the requirement that it respond to the Secretary's letter. On the same date, Santa Clara filed a motion supporting PG&E's motion.

If the Commission approves the offer of settlement, PG&E's response to Santa Clara's response to the Secretary's letter will be unnecessary. It therefore appears that good cause exists for suspending the time by which PG&E must file a response. Notice is hereby given that the time by which PG&E must file a response pursuant to the Commission Secretary's letter of September 25, 1989, is suspended until such time as the Commission issues a final order regarding the offer of settlement filed on March 13, 1990, or issues an order directing the filing of such response.

Lois D. Cashell,

Secretary.

[FR Doc. 90–7141 Filed 3–28–90; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

Clean Coal Technology Program; Availability of Draft Program Opportunity Notice

AGENCY: Office of Fossil Energy, Department of Energy (DOE).

ACTION: Notice of availability of a draft Program Opportunity Notice (PON) for the Clean Coal Technology Program, and request for public comments.

SUMMARY: DOE is issuing a draft Program Opportunity Notice (PON), No. DE–PS01–90FE62087, for public comment. The draft PON solicits proposals for cost-shared projects to demonstrate clean coal technologies that could be commercialized in the 1990's. A total of $600 million dollars (less approximately $32 million for DOE's administrative expenses) has

been appropriated for financial assistance awards under this solicitation.

DATES: The deadline for receipt of comments on the draft PON is April 30, 1990 at 4:30 p.m., e.d.t.

ADDRESS FOR PUBLIC COMMENTS: Written comments must be delivered or mailed to the U.S. Department of Energy, Office of Procurement Operations, Attn: Herbert D. Watkins, MA–405.31, room II–065, 1000 Independence Avenue SW., Washington, DC 20585.

ADDRESSES FOR OBTAINING DRAFT PON: Written requests must be sent to U.S. Department of Energy, P.O. Box 2500, Attn: Document Control Specialist, MA–405.21, Washington, DC 20013. Written requests to be placed on the mailing list for the draft PON should be received by April 9, 1990. Also, copies of the draft PON may be picked up at the U.S. Department of Energy, Office of Procurement Operations, Document Control Specialist, Forrestal Building, room 1J–005, 1000 Independence Avenue SW., Washington, DC between the hours of 9 a.m. and 3 p.m., e.d.t., Monday through Friday, except Federal holidays. The draft PON is anticipated to be available on or after April 13, 1990. If you have received past solicitations and/or attended the 1988/1989/1990 Clean Coal Technology public meetings you need not submit a written request for the draft PON.

SUPPLEMENTARY INFORMATION: On October 23, 1989, the President signed Public Law 101–121, "An Act Making Appropriations for the Department of Interior and Related Agencies for the Fiscal Year Ending September 30, 1990, and for Other Purposes." The Act appropriates $600 million for DOE to conduct and make cost-shared financial assistance awards under a fourth competitive solicitation for clean coal technology demonstration projects. As recommended by the Congress, DOE plans to issue a final PON on June 1, 1990. A preproposal conference will be announced in the final PON. The preproposal conference is presently scheduled to occur at 10 a.m. on June 14, 1990, in the Thomas Jefferson Auditorium, U.S. Department of Agriculture (South Building between the 5th and 6th wings), 14th and Independence Avenue SW., Washington, DC.

The final PON will establish a 120-day deadline for the submission of proposals. The evaluation of proposals and selection of projects for negotiations is expected to be completed by approximately February 1, 1991.

FOR FURTHER INFORMATION CONTACT:

Mr. Herbert D. Watkins, Tel. (202) 586–1026.

Issued in Washington, DC

Robert H. Gentile,

Assistant Secretary, Fossil Energy.

[FR Doc. 90–7224 Filed 3–28–90; 8:45 am]

BILLING CODE 6540–01–M

[FE Docket No. 90–12–NG]

Empire Natural Gas Corp.; Application To Import Natural Gas From and Export Natural Gas to Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application for blanket authorization to import natural gas from and export natural gas to Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on February 28, 1990, of an application filed by Empire Natural Gas Corporation (ENG) for blanket authorization to import up to 20 Bcf of natural gas from Canada and to export up to 20 Bcf of natural gas to Canada. The application requests that the import/export authority be approved for spot and short-term sales for a two-year period commencing on the date of first delivery. ENG expects to utilize existing pipeline facilities for transportation of the volumes to be imported and exported, and states it will submit quarterly reports detailing each transaction.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Orders Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, a applicable, requests for additional procedures and written comments are to be filled at the address listed below no later than 4:30 p.m., e.d.t., April 30, 1990.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building Room 3F–056, FE–50, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

John S. Boyd, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F–094, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4523.

Diane J. Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: The exact legal name of the applicant is Empire Natural Gas Corporation, a company incorporated under the laws of the State of New York, with its principal place of business in Greene, New York. ENG markets natural gas and provides gas to various public authorities and commercial and industrial customers. The company intends to import and/or export gas on its own behalf or as an agent on behalf of other parties.

ENG requests blanket authorization to import up to 20 Bcf of natural gas from Canada over a term of two years commencing on the date of first delivery. The individual short-term and spot sales would be freely negotiated, with market conditions determining the price and other terms of these transactions. ENG asserts that market sensitivity will assure both the competitiveness and need for the gas throughout the term of the import arrangement.

ENG also requests blanket authorization to export up to 20 Bcf of natural gas from the United States to Canada over a term of two years commencing on the date of first delivery. The terms of short-term and spot sales are expected to be competitive with market conditions. The company anticipates that some of the gas to be exported under the proposed authorization would be reimported back into the U.S. for domestic consumption. ENG maintains that the proposed export, given the current domestic supply of gas, would provide new markets for these supplies and would enhance competition in the marketplace. The company requests that if its application is approved, it be permitted to import and/or export natural gas at any point on the international border where existing facilties are located.

The decision on the application for import authority will be made consistent with the U.S. DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In reviewing natural gas export applications, the domestic need for the gas to be exported is considered, and any other issues determined to be appropriate in a particular case, including whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing

commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose this application, should comment in their responses on these matters as they relate to the requested import and export authority. The applicant asserts that this import/export arrangement would be competitive, would provide new markets for the domestic gas to be exported and therefore is in the public interest. Parties opposing this arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act (NEPA), (42 U.S.C. 4321 *et seq.*) requires the DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until the DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestants a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notice of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590.

Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law or policy at issue, should that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, a notice will be provide to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of ENG's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on March 23, 1990.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 90–7222 Filed 3–28–90; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 90–08–NG]

Enjet Natural Gas Inc.; Application for Blanket Authorization To Import and Export Natural Gas and Liquefied Natural Gas

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application for blanket authorization to import and export natural gas and liquefied natural gas.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on February 8, 1990, of an application filed by Enjet Natural Gas Inc. (Enjet) for blanket authorization to import up to 100 Bcf, and to export up to 100 Bcf, of natural gas, including liquefied natural gas (LNG), over separate two-year periods beginning on the date of first import and export. Enjet intends to utilize existing pipeline and LNG facilities for the processing and transportation of the volumes to be imported or exported and to submit quarterly reports detailing each transaction.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., e.d.t., April 30, 1990.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F–056, FE–50, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION:

Larine A. Moore, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F–056, FE–53, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, GC–32, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: Enjet, a Texas corporation, is a marketer of natural gas. Under the blanket import authority sought, Enjet contemplates importing and exporting natural gas and LNG secured from a variety of foreign and domestic suppliers for sale to various domestic and foreign purchasers, including pipelines, local distribution companies and commercial and industrial end-users. Enjet would import and export natural gas and LNG both for its own account as well as the account of others.

Enjet currently is negotiating arrangements to export natural gas to Canada and Mexico, but is requesting the flexibility to enter into agreements for the importation and exportation of natural gas and LNG with Canada Mexico as well as other similarly situated countries. The specific terms of each import and export arrangement would be negotiated on an individual basis at market responsive prices.

Enjet requests that an authorization be granted on an expedited basis. Except in emergency circumstances, 10 CFR 590.205(a) of FE's administrative procedures provides for a public comment period of not less than 30 days. Enjet does not identify any emergency circumstances that would justify expedited consideration. Accordingly, a decision on the application will not be

made until all responses to this notice have been received and evaluated.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In reviewing natural gas export applications, the domestic need for the gas to be exported is considered, and any other issues determined to be appropriate in a particular case, including whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that the proposed imports will make competitively priced gas available to U.S. markets while the short-term nature of the transactions will minimize the potential for undue long-term dependence on foreign sources of energy. Enjet also asserts that the proposed export volumes would result in a reduction of the current excess domestic natural gas supply, generate income and tax revenues, and reduce the U.S. trade deficit. Parties opposing the arrangement bear the burden of overcoming these assertions.

NEPA Compliance

The National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*), requires the DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until the DOE has met its NEPTA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material nd relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Enjet's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC., March 23, 1990.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 90–7223 Filed 3–28–90; 8:45 am]

BILLING CODE 6450–01–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., suite 140, Washington, DC 20037. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on this information collection should contact Eyvette Flynn, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–3785.

OMB Number: None.

Title: Conditional Temporary Authorization to Operate a part 90. Radio Station.

Form Number: FCC Form 572C.

Action: New collection.

Respondents: Individuals or households, state or local governments, businesses or other for-profit (including small businesses), and non-profit institutions.

Frequency of Response: Recordkeeping requirement.

Estimated Annual Burden: 17,023 Recordkeepers; 1,702 Responses.

Needs and Uses: Applicants eligible to hold a radio station authorization below 470 MHz or in the 929–930 MHz band in the Private Land Mobile Radio Service may use this FCC Form 572C as a conditional temporary authorization to operate their equipment during processing of an application for license grant.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90–7125 Filed 3–28–90; 8:45 am]

BILLING CODE 6712–01–M

Comments Invited on Indiana Regional Public Safety Plan

March 21, 1990.

The Commission has received the public safety radio communications plan for the Indiana area (Region 14).

In accordance with the Commission's Report and Order in General Docket 87–112 implementing the Public Safety

National Plan, parties are hereby given thirty days from the date of **Federal Register** publication of this public notice to file comments and fifteen days to reply to any comments filed. (See Report and Order, General Docket 87–112, 3 FCC Rcd 905 (1987), at paragraph 54.)

In accordance with the Commission's Memorandum Opinion and Order in General Docket 87–112, Region 14 consists of the State of Indiana, except for the following counties: Lake, La Porter, Jasper, Starke, St. Joseph, Porter, Newton, Pulaski, Marshall and Elkhart counties. General Docket 87–112, 3 FCC Rcd 2113 (1988).)

Comments should be clearly identified as submissions to General Docket 90–178, Indiana—Region 14, and commenters should send an original and five copies to the Secretary, Federal Communications Commission, Washington, DC 20554.

Questions regarding this public notice may be directed to Maureen Cesaitis, Private Radio Bureau, (202) 632–6497, or Fred Thomas, Office of Engineering and Technology, (202) 653–8112.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90–7122 Filed 3–28–90; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Martime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC, Office of the Federal Maritime Commission, 1100 L Street NW., room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC, 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200060–014.

Title: Port of New Orleans/Coastal Cargo Company Terminal Agreement.

Parties:

Port of New Orleans (Port)

Coastal Cargo Company (CCC).

Synopsis: The Agreement provides for the Port to re-let to CCC ten (10) sections of the Galvaz Street Wharf and have CCC's rent increased proportionately as specified in section 9(b) of the basic agreement.

Agreement No: 224–200339.

Title: Port of Vancouver/ELMA S.A. Terminal Use Agreement.

Parties:

Port of Vancouver

ELMA S.A.

Synopsis: The Agreement provides for a sharing of the terminal revenues consisting of dockage, wharfage, and service and facilities charges as a result of ELMA's agreement to designate the Port of Vancouver as its Columbia River Port of Call. The term of the Agreement is one year, with the option to extend for one full year under the same terms and conditions specified in this agreement.

Agreement No.: 224–200338.

Title: Alabama State Docks Department/Florida Transportation Service, Inc. Terminal Agreement.

Parties:

Alabama State Docks Department (Department)

Florida Transportation Services, Inc. (FTSI).

Synopsis: The Agreement permits FTSI to perform or have performed cargo and freight handling services at the Department's terminal facilities at the Port of Mobile. The Department will retain ten percent of the Department's tariff charges collected for the services performed by FTSI.

By Order of the Federal Maritime Commission.

Dated: March 23, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 90–7180 Filed 3–28–90; 8:45 am]

BILLING CODE 6730–01–M

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC, Office of the Federal Maritime Commission, 1100 L Street NW., room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 24–010634–001.

Title: Puerto Rico Ports Authority/ Luis Ayala Colon Sucrs., Inc. Terminal Agreement.

Parties:

Puerto Rico Ports Authority

Luis Ayala Colon Sucrs., Inc. (LACSI).

Synopsis: The Agreement extends the term of the basic agreement for the use of premises at Pier B, Puerto Nuevo, San Juan, Puerto Rico, to March 22, 1995. It also amends the basic agreement to: (1) Increase the daily penalty to $1,135.70 if LACSI does not surrender the premises upon request; (2) increase the cash deposit to $34,071.24 required for security for payment of rentals and other charges; and (3) add a provision that rental payments will be revised every three years.

By Order of the Federal Maritime Commission.

Dated: March 26, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 90–7225 Filed 3–28–90; 8:45 am]

BILLING CODE 6730–01–M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–010776–055.

Title: Asia North America Eastbound Rate Agreement.

Parties:

American President Lines, Ltd.

Kawasaki Kisen Kasha, Ltd.

A.P. Moller-Maersk Line

Mitsui O.S.K. Lines, Ltd.

Neptune Orient Lines, Ltd.

Nippon Liner Systems, Ltd.

Nippon Yusen Kaisha Line

Sea-Land Service, Inc.

Synopsis: The proposed modification provides that the Agreement may deduct legal expenses from monies collected for service contract dead freight, neutral body liquidated damages, and terminated service contract re-rating revenues prior to distribution of these monies to the parties. It would also make other nonsubstantive changes.

By Order of the Federal Maritime Commission.

Dated: March 26, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 90-7226 Filed 3-28-90; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Policy Statement—the Federal Reserve in the Payments System

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Policy statement.

SUMMARY: The Board is issuing a revision to its 1984 policy statement "The Federal Reserve in the Payments System." The policy statement, which is an official statement of principles for the Federal Reserve's participation in the payments system, responds to recommendations made by the General Accounting Office in its May 1989 report, *Check Collection: Competitive Fairness Is an Elusive Goal.*

EFFECTIVE DATE: March 23, 1990.

FOR FURTHER INFORMATION CONTACT: Bruce J. Summers, Associate Director (202/452-2231), or Louise L. Roseman, Assistant Director (202/452-3874), Division of Federal Reserve Bank Operations; Oliver I. Ireland, Associate General Counsel, Legal Division (202/452-3625); for the hearing impaired *only*: Telecommunications Device for the Deaf, Earnestine Hill or Dorothea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION: In May 1989, the GAO (General Accounting Office) issued the report *Check Collection: Competitive Fairness Is an Elusive Goal.* The report was prepared in response to a requirement in the Competitive Equality Banking Act of 1987 that the GAO review issues associated with the Reserve Banks' exemption from paying presentment fees and to determine whether the Reserve Banks receive services from check clearing houses. The GAO expanded the scope of its report to encompass the broader subject of competitive fairness in the provision of check collection services. The Board provided comments on the draft GAO report in January 1989 and responded to the final report in July 1989.

The GAO recommended that the Board should define its commitment to competitive fairness and that Federal Reserve officials, when deliberating on regulatory, price, and service changes, should identify any practical and legal differences between Federal Reserve Banks and collecting banks that may hinder collecting banks' ability to effectively offer competing check collection services. The GAO believes that competitive fairness means that collecting banks should have the same abilities as Reserve Banks to collect checks unless fulfillment of payments system safety, soundness, or efficiency objectives indicate Reserve Banks should take on unique abilities. The GAO also recommended that a forum be developed for hearing disagreements raised by private sector participants related to changes made by the Federal Reserve that may result in the private sector being precluded from effectively offering competing check collection services.

The GAO related its recommendations on competitive fairness to the development of a revised same-day payment proposal for checks. The Board originally issued a same-day payment proposal for public comment in April 1988 (53 FR 11911, April 11, 1988), and the Board staff has received input from an industry advisory group to assist in its development of a revised proposal. The Board anticipates that it will consider a revised proposal in late 1990.

In response to the GAO's report, the Board has adopted a revised policy statement on the role of the Federal Reserve in the payments system. The policy statement contains new sections on competitive impact analysis and a forum for hearing depository institutions' concerns relating to payments matters. It defines a process to be followed by the Federal Reserve in evaluating the impact of major legal or operations changes on the ability of private sector service providers to compete with the Reserve Banks by offering similar services. The process described in the policy statement is an operative, not an abstract, definition of competitive fairness. Legal changes would include, but not be limited to, certain modifications to Regulations CC, E, and J, as well as to certain aspects of programs such as payments system risk reduction. Operating changes could include, but not be limited to, new prices and services as well as methods for accessing these services. Federal Reserve internal procedures for handling price and service changes have been reviewed to ensure consistency with the policy statement.

The competitive impact analysis described in the policy statement would apply to proposed changes that would likely have a substantial effect on payments system participants. In such cases, the Board would first determine whether the proposed change would have a *direct* and *material* adverse effect on the ability of other service providers to compete effectively with the Federal Reserve. Second, if such an adverse effect on the ability to compete were identified, the Board would ascertain whether the adverse effect were due to legal differences or due to a dominant market position deriving from such legal differences. The latter test is intended to distinguish between situations where the Reserve Banks may "dominate" a particular market segment simply because they are the most efficient providers of the service from situations where a legal difference gives an advantage to the Reserve Banks that clearly explains their dominance. Market dominance due to very efficient operations that would result in an adverse competitive effect would not be reason to modify a proposal for purposes of the competitive impact analysis. Third, if such differences were judged to exist, then the proposed change would be further evaluated to assess its benefits, such as contributing to payments system efficiency or integrity or other Board objectives, and determine whether the proposal's objectives could be reasonably achieved with a lesser or no adverse competitive impact. Fourth, the Board would then either modify the proposal to lessen or eliminate the adverse impact on the ability of competitors to compete or determine that the payments system objectives may not be reasonably achieved if the proposal were modified. If reasonable modifications would not mitigate the adverse effect, the Board would then determine whether the anticipated benefits were significant enough to proceed with the change even though it may adversely affect the ability of other service providers to compete with the Federal Reserve in that service.

The revised policy statement also describes a process for hearing disagreements that can be used by the public to voice concerns to senior officials in the Reserve Banks and finally, if necessary, to the Board, if they believe that the Federal Reserve's priced services policies or practices are not consistent with the competitive analysis or other criteria established in the policy statement. Basically, in the event that a

payments system participant has an unresolved complaint about a change, the complaint would be submitted in writing to the First Vice President of the appropriate Reserve Bank. First Vice Presidents would forward complaints on legal matters decided by the Board to the Chairman of the Committee on Federal Reserve Bank Activities. If satisfaction was not obtained on other complaints addressed by the Reserve Bank, the complaint could then be submitted to the Chairman of the Board's Committee on Federal Reserve Bank Activities for final disposition.

The procedures for analyzing the competitive impact of legal and operating changes are intended for use by Reserve Bank and Board staff in analyzing these changes. It is intended that a rigorous process of research and analysis be followed for all major changes that are contemplated.

In light of the foregoing, the Board is issuing the following policy statement:

The Federal Reserve in the Payments System

This paper sets out the Federal Reserve's general policy regarding its role in the payments system. The Federal Reserve's objective in describing its policy is to encourage closer cooperation among all participants in improving the payments system and to facilitate the business planning of users and providers of payment services. The paper also outlines the procedure the Federal Reserve will ordinarily follow in reviewing its service offerings. The Board, in its sole discretion, will determine when the procedure is applicable and will make the decisions related to the procedure.

In summary, the role of the Federal Reserve in providing payment services is to promote the intergrity and efficiency of the payments mechanism and to ensure the provision of payment services to all depository institutions on an equitable basis, and to do so in an atmosphere of competitive fairness. Given the size, speed, and interdependencies of payments, this mission is, and will likely continue to be, even more important than it was when the Federal Reserve was established in 1913.

Role of the Federal Reserve

Background

Since the Federal Reserve's inception, its active involvement in payments processing has been an integral part of the development of the nation's financial system. The Congress, responding in part to the breakdown of the check collection system in the early 1900s, made the Federal Reserve an active participant in the payments system when it established the Federal Reserve in 1913. At that time the Congress envisioned that the Federal Reserve would play a dual role as an operator and a regulatory of the payments system. The Congress has reaffirmed its commitment to this dual role for the Federal Reserve in the Monetary Control Act of 1980 and the Expedited Funds Availability Act, enacted in 1987.

The Federal Reserve has a wide-ranging participatory role in the payments system. Reserve Banks process checks and provide a nationwide network for the collection of items ineligible for processing through normal check-collection channels, such as matured coupons, bonds, and banker's acceptance. The Federal Reserve assisted in developing the automated clearing house system for small-dollar electronic payments and now provides a nationwide electronic ACH network. Depository institutions transfer large-dollar payments over the Federal Reserve's nationwide wire transfer system (Fedwire). The Federal Reserve also operates a book-entry securities service for the safekeeping and transfer of United States Treasury and agency securities. Finally, the Federal Reserve supports a variety of private clearing arrangements by providing settlement services through its nationwide network of account relationships.

This participatory role has served the nation well, contributing directly and indirectly to widespread public confidence in a payments system that is quick, sure, and efficient. The Federal Reserve's participatory role is well-suited to the structure of the United States' financial industry. This country has a highly fractionalized banking system spread over wide areas with different types of institutions having differing payments needs. As interstate banking spreads, the underlying public policy rationale for the Federal Reserve's operational presence in the payments system will continue to be an important consideration. The Federal Reserve will continue to bring to payments markets an overall concern for safety and soundness, promotion of operating efficiency, and equitable access. Indeed, those considerations relating to integrity, efficiency, and access to the payments system will remain at the core of the federal Reserve's role and responsibilities regarding the operation of the payments system.

Integrity of the Payments System

A reliable payments system is crucial to the economic growth and stability of the nation. The smooth functioning of markets for virtually every good and service is dependent upon the smooth functioning of banking and financial markets, which in turn is dependent upon the integrity of the nation's payments system. History shows that fragility of a country's payments system can precipitate or intensify a general economic crisis.

The breakdown of the payments machinery in the United States during the panic of 1907, which helped to precipitate the creation of the Federal Reserve System, is a case in point. More recently, the 1974 failure of a relatively small German financial institution, Bankhouse I.D., Herstatt, and the consequent uncertainty regarding payments through private clearing networks, temporarily caused substantial disruption in the United States payments system. This clearly demonstated that financial failures, including those abroad, can transmit systemic effects, via the payments system, to financial institutions in all parts of the world.

As payments system participant and central bank, the Federal Reserve's roles are integrally related. The Federal Reserve's direct and ongoing participation in the operation of the payments system enhances the integrity of the payment process. For example, the Federal Reserve's final and irrevocable Fedwire funds transfer service reduces the risk that failure of one institution could be transmitted rapidly to other institutions. In addition, in order to carry out its responsibilities as central bank, the Federal Reserve frequently provides payment services to troubled depository institutions that other providers of payment services may not serve because of the risks involved. This helps to ensure that the inability of a depository institution to make or process payments will not trigger its insolvency and that the institution's problems can be resolved in an orderly fashion with minimum disruptive effects.

Efficiency of the Payments System

Federal Reserve involvement in the payments system promotes efficiency for a variety of reasons. The Federal Reserve has a public-interest motivation in seeking to stimulate improvements in the efficiency of the payments system. The Federal Reserve has worked closely with other providers of payment services to develop and use advanced technology and procedures. Because of

its day-to-day operating presence in the payments system, it has the know-how to contribute to technical advances as well as the ability to help promote their implementation. Federal Reserve involvement may be particularly appropriate for advances that require widespread cooperation among depository institutions (for example, the introduction and implementation of MICR encoding of checks). Moreover, Federal Reserve involvement as a neutral and trusted intermediary can facilitate acceptance of innovations that improve the efficiency of the payments system. Additional efficiencies result from the scope of the Federal Reserve's participation in the payments system.

As the Congress anticipated in the Monetary Control Act of 1980, competition between the Federal Reserve and other providers of payment services has resulted in a more efficient payments system. Both the Federal Reserve and other service providers have been prompted by competition to process payments as efficiently as possible and to improve the quality of the services offered.

It is recognized that the most significant further gains in payment efficiency are likely to come from the application of advances in electronic technology. These gains will become more widespread as new technology becomes available to all depository institutions, regardless of their size or location. The Federal Reserve will continue to promote the use of electronics in providing payment services where it can demonstrate that this technology will enhance the efficiency or effectiveness of its services.

Provision of Payment Services to All Depository Institutions

Federal Reserve payment services are available to all depository institutions, including smaller institutions in remote locations that other providers might choose not to serve. Under the Monetary Control Act, in making payment services available to depository institutions, the Federal Reserve must give due regard to the provision of an adequate level of services nationwide.

Since implementation of the Act, the Reserve Banks have provided access to Federal Reserve services to nonmember banks, mutual savings banks, savings and loan associations, and credit unions.

Fiscal-Agency Functions

In addition to providing payment services to depository institutions, the Federal Reserve, as fiscal agent, provides a variety of services on behalf of the United States Treasury and other government agencies. These include the creation, safekeeping, and transfer of book-entry records evidencing ownership of the public debt and the processing of government payments.

Depository institutions benefit from production efficiencies that result when the facilities and expertise required to provide these fiscal agency services are used to produce other similar services for depository institutions. Similarly, paper and electronic payment services are supplied to the Treasury and other government agencies more efficiently because the Federal Reserve also offers these services to depository institutions.

Criteria for Evaluating Proposed Payments System Changes

Cost Recovery

In offering payment services, the Federal Reserve must satisfy the cost-recovery objective of the Monetary Control Act: in the long run, aggregate revenues should match costs. The pricing principles adopted by the Board of Governors in 1980 added to the aggregate cost-recovery objective specified in the Monetary Control Act the more stringent objective of full-cost recovery (including all operating and float costs and imputed taxes and return on capital) for each service line.[1] This internal objective of cost recovery for each service line was subsequently modified to provide that revenues for each service line must cover all operating costs, float costs, and certain imputed costs, such as the cost of interest on short- and long-term debt, as well as make some contribution to the pre-tax return on equity. Thus, each service line must be at least marginally "profitable" and all service lines combined must, in the aggregate, cover all production costs, float costs, and the private sector adjustment factor.

The Federal Reserve establishes cost-recovery objectives, rather than targeted volume objectives, for its services. In a dynamic payments environment, circumstances might arise, such as changes in technology or banking structure, that could jeopardize the Federal Reserve's ability to meet its cost-recovery objectives in a particular service. If a service experiencing such developments can be improved to be responsive to the market, it would continue to be offered. If it becomes clear, however, that the service cannot be expected to meet cost-recovery objectives, the Federal Reserve would reassess the appropriateness of continuing to provide the service after taking into account its other objectives, including the requirement to provide equitable access and an adequate level of services nationwide. For example, several Reserve Banks have stopped offering cash transportation in areas where an adequate level of this service is otherwise provided by the private sector.

More efficient operations or aggressive pricing by other service providers could also result in the Federal Reserve's failing to meet cost-recovery objectives. Because the Monetary Control Act directs the Federal Reserve to give due regard to competitive factors, a decision would have to be made whether the public benefits of continuing to offer the service justify the shortfall. The Federal Reserve might also continue to provide a service that did not meet cost-recovery objectives if the revenue shortfall were caused by a temporary situation that could be corrected. In any event, a decision to continue to provide a service that could not reasonably be expected to meet cost recovery objectives would be made by the Federal Reserve Board only after seeking public comment and only where there were clear public benefits to such a course of action. Similarly, any decision to withdraw from a particular service line would have to be undertaken in an orderly way, giving due regard to the transition problems associated with the discontinuation of a service.

New Services and Service Enhancements

The Federal Reserve's operational presence in the payments system can be expected to change as the payments system evolves. Increased interstate banking activity, technological developments, developments in law and regulation, and the entry of new participants in the payments system will all influence the evolution of the Federal Reserve's role.

As the Federal Reserve considers the introduction of new services or major service enhancements, all of the following criteria must be met:

- The Federal Reserve must expect to achieve full recovery of costs over the long run.
- The Federal Reserve must expect that its providing the service will yield a clear public benefit, including, for example, promoting the integrity of the payments system, improving the effectiveness of financial markets, reducing the risk associated with payments and securities transfer

[1] See the appendix for details on calculation of costs and fees.

services, or improving the efficiency of the payments system.

• The service should be one that other providers alone cannot be expected to provide with reasonable effectiveness, scope, and equity. For example, it may be necessary for the Federal Reserve to provide a payment service to ensure that an adequate level of service is provided nationwide or to avoid undue delay in the development and implementation of the service.

Competitive Impact Analysis

The Board will also conduct a competitive impact analysis when considering an operational or legal change, such as a change to a price or service, or a change to Regulation J, if that change would have a direct and material adverse effect on the ability of other service providers to compete effectively with the Federal Reserve in providing similar services due to differing legal powers or constraints or due to a dominant market position of the Federal Reserve deriving from such legal differences. All operational or legal changes having a substantial effect on payments system participants will be subject to a competitive impact analysis, even if competitive effects are not apparent on the face of the proposal.

In conducting the competitive impact analysis, the Board would first determine whether the proposal has a direct and material adverse effect on the ability of other service providers to compete effectively with the Federal Reserve in providing similar services. Second, if such an adverse effect on the ability to compete is identified, the Board would then ascertain whether the adverse effect were due to legal differences or due to a dominant market position deriving from such legal differences. Third, if it were determined that legal differences or a dominant market position deriving from such legal differences were judged to exist, then the proposed change would be further evaluated to assess its benefits, such as contributing to payments system efficiency or integrity or other Board objectives, and to determine whether the proposal's objectives could be reasonably achieved with a lesser or no adverse competitive impact. Fourth, the Board would then either modify the proposal to lessen or eliminate the adverse impact on competitors' ability to compete or determine that the payments system objectives may not be reasonably achieved if the proposal were modified. If reasonable modifications would not mitigate the adverse effect, the Board would then determine whether the anticipated benefits were significant enough to proceed with the change even through it may adversely affect the ability of other service providers to compete with the Federal Reserve in that service.

Process for Communicating Concerns

If a depository institution or other payments system participant believes that the Federal Reserve's priced services policies or practices are not in accord with the competitive analysis or other criteria described above, it should communicate its concerns to the First Vice President of the local Federal Reserve Bank. If the institution wishes to pursue the matter further after discussing the issue with the Reserve Bank staff, it may address its concern to the Board member designated as Chairman of the Board's Committee on Federal Reserve Bank Activities.

Conclusion

The Federal Reserve recognizes its responsibilities to cooperate with other providers in improving the payments system and, through the procedures described above, to maintain a fundamental commitment to competitive fairness. These responsibilities must, in the final analysis, be viewed as an extension of the Federal Reserve's underlying responsibility for preserving the safety and soundness of, and public confidence in, the payments system.

Appendix—Methodology for Computing Federal Reserve Bank Costs and Fees

In accordance with the Monetary Control Act, the Federal Reserve establishes prices for its payment services in order to recover costs and a private sector adjustment factor (PSAF). The PSAF is an allowance for the taxes that would have been paid and the return on capital that would have been provided had the Federal Reserve's priced services been furnished by a private-sector firm.

Costs for providing services are derived from the Federal Reserve's Planning and Control System (PACS). PACS is the uniform cost accounting system Reserve Banks use for determining the full costs of fulfilling their four basic areas of responsibility: (1) Monetary policy, (2) supervision and regulation, (3) fiscal agency services, and (4) services to financial institutions and the public (the last includes both priced and nonpriced services). The system was developed in the mid-1970s to serve as a cost-accounting system, similar to systems used in the private sector, and also to serve as a vehicle for evaluating the cost-effectiveness and relative efficiency of the Reserve Banks.

PACS provides the Federal Reserve with an important management tool for budgeting and expense control by ensuring that similar expenses are recorded by Reserve Banks in the same way and that all Reserve Banks report operating expenses under a set of common and uniform definitions.

Like most expense-accounting systems used in the private sector, expenses under PACS are classified by type or "object" of expense, such as salaries, supplies, equipment and travel, and by the "output" to which the expense is related, such as fiscal services to the Treasury or the provision of check collection services to depositing institutions. Classification of expenses by type enables the Federal Reserve to collect necessary information for external and internal financial reporting and control purposes. Classification of expenses by output service enables Federal Reserve management to analyze the overall costs of Reserve Bank operations in terms of ongoing service responsibilities, the programs instituted to fulfill these service responsibilities, and the basic activities or processes included in the provision of each service.

There are subsidiary services within each area of responsibility (service line). "Services to financial institutions and the public," for example, encompasses priced services such as commercial check, electronic funds tranfer, securities, and noncash collection. Within each of these subsidiary services, PACS identifies specific "activities" that reflect the basic operations or processes within the services.

PACS classifies all costs into three categories: direct, support, and overhead costs. Direct costs are those costs directly attributable to a given service. Support costs are those costs, such as computer programming and building operations, that, although not directly used in priced service operations, are required to support such activities. All support costs are fully charged to the benefiting activities on a usage basis. Overhead costs represent all remaining Federal Reserve costs that cannot be charged directly to an output service on a usage basis. Examples of overhead functions include the personnel department, protection, and budget control. Overhead costs are allocated to benefiting services based upon formulas that reflect relative usage.

All Federal Reserve fees are reviewed annually and revised, if necessary. The annual review takes place during the third quarter of the year. Each Reserve Bank forecasts its costs and volumes for each priced service for the upcoming year. Included in the cost estimate are all direct, support, overhead, and float costs that are to be allocated to each priced service. The cost and volume estimates are based on a combination of historical experience and projections. At the same time, the Federal Reserve calculates a proposed PSAF for the year.

Aggregate cost and volume estimates for nationally priced services are based on estimates made by the individual Reserve Banks.

The proposed Reserve Banks fees are reviewed by the System's Pricing Policy Committee and the staff of the Board of Governors. The purpose of the review is to ensure that the cost and volume estimates are reasonable, that the PSAF calculation is consistent with System guidelines, and that proposed prices meet the cost-recovery

policies of the Board of Governors. Finally, the Board of Governors reviews and approves the proposed prices and PSAF.

By order of the Board of Governors of the Federal Reserve System, March 23, 1990.

William W. Wiles,

Secretary of the Board.

[FR Doc. 90-7162 Filed 3-28-90; 8:45 am]

BILLING CODE 6210-01-M

Cho Hung Bank, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 17, 1990.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Cho Hung Bank,* Seoul, Korea; to become a bank holding company by acquiring 100 percent of the voting shares of Cho Hung Bank of New York, New York, New York, a *de novo* bank.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Illinois Corporation,* Evanston, Illinois; to acquire 100 percent of the voting shares of Valley Financial Services, Inc., South Elgin, Illinois, and thereby indirectly acquire Valley Bank and Trust Company, South Elgin, Illinois.

C. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust street, St. Louis, Missouri 63166:

1. *Mid-South Bancorp, Inc.,* Franklin, Kentucky; to acquire at least 93.4 percent of the common voting shares and at least 84.1 percent of the preferred shares of The Peoples Bank of Elk Valley, Fayetteville, Tennessee.

2. *The Peoples Bank Employee Stock Ownership Plan,* Marion, Kentucky; to become a bank holding company by acquiring at least 39.26 percent of the voting shares of The Peoples Bank, Marion, Kentucky.

D. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *1868 Financial Corporation,* Wilmington, Delaware; to become a bank holding company by acquiring 100 percent of the voting shares of Citizens National Bank of Weatherford, Weatherford, Texas.

E. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Wasatch Bancorp, Inc.,* Orem, Utah; to become a bank holding company by acquiring 100 percent of the voting shares of Wasatch Bank, Orem, Utah.

Board of Governors of the Federal Reserve System, March 23, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-7163 Filed 3-28-90; 8:45 am]

BILLING CODE 6210-01-M

Consolidated Equity Corp.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than April 6, 1990.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Consolidated Equity Corporation,* Norman, Oklahoma; to become a bank holding company by acquiring at least 90 percent of the voting shares of First American Bank and Trust Company, Purcell, Oklahoma.

Board of Governors of the Federal Reserve System, March 26, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-7268 Filed 3-28-90; 8:45 am]

BILLING CODE 6210-01-M

Societe Generale; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and 225.21(a) of Regulation Y (12 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decrease or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute,

summarizing the avidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 17, 1990

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Societe Generale,* Paris, France; to acquire Las Investments, Inc., Chicago, Illinois, and thereby engage in futures commission merchant activities pursuant to § 225.25(b)(18) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 23, 1990

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90–7164 Filed 3–28–90; 8:45 am]

BILLING CODE 6210–01–M

Roderick S. Sturdivant; Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant list below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 12, 1990.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 100 Marietta Steet N.W., Altanta, Georgia 30303:

1. *Roderick S. Sturdivant,* Lilburn, Georgia; to acquire an additional 42.11 percent of the voting shares of the The Gwinnett Financial Corporation, Lawrenceville, Georgia, for a total of 51.49 percent, and thereby indirectly acquire The Bank of Gwinnett County, Lawrenceville, Georgia.

Board of Governors of the Federal Reserve System, March 23, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90–7165 Filed 3–28–90; 8:45 am]

BILLING CODE 6210–01–M

Synovus Financial Corp.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 23, 1990.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 100 Marietta Street NW., Atlanta, Georgia 30303:

1. *Synovus Financial Corp.,* Columbus, Georgia; to engage *de novo* through its subsidiary, Synovus Securities, Inc., Columbus, Georgia, in consumer financial counseling services activities pursuant to § 225.25(b)(2) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 23, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90–7166 Filed 3–28–90; 8:45 am]

BILLING CODE 6210–01–M

FEDERAL TRADE COMMISSION

[Dkt. C–3281]

Nutronics Corp., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, a Longmont, Co. manufacturer of the Alter-Brake System (ABS) to have competent and reliable scientific research to substantiate its increased fuel-saving claims, to cease misrepresenting that its ABS device has been approved by the government for sale to the public, and to display a disclaimer when making any representation of improved fuel economy or performance through the use of any such device.

DATES: Complaint and Order issued January 16, 1990.[1]

FOR FURTHER INFORMATION CONTACT: R. Norman Cramer, Jr., Denver Regional Office, Federal Trade Commission, 1405 Curtis Street, Suite 2900, Denver, CO 80202–2393 (303) 844–2271.

SUPPLEMENTARY INFORMATION: On Tuesday, August 22, 1989, there was published in the **Federal Register,** 54 FR 34822, a proposed consent agreement with analysis In the Matter of Nutronics Corporation, et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

A comment was filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue NW., Washington, DC 20580.

and desist in disposition of this proceeding.

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45.

Donald S. Clark,

Secretary.

[FR Doc. 90-7189 Filed 3-28-90; 8:45 am]

BILLING CODE 6750-01-M

[Docket No. 9229]

Outdoor World Corp.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a membership campground promoter, based in Bushkill, PA, from misrepresenting in promotional mailings that named consumers have won specified prizes when the consumers had not won the specified prizes. Also, the consent order requires respondent to retain accurate records, for three years, of advertising and promotional materials concerning prizes and gifts awarded.

DATES: Complaint issued July 17, 1989.

Order issued January 10, 1990.[1]

FOR FURTHER INFORMATION CONTACT: Lawrence Hodapp, FTC/H-238A, Washington, DC 20580. (202) 326-3105.

SUPPLEMENTARY INFORMATION: On Thursday, November 2, 1989, there was published in the **Federal Register**, 54 FR 46303, a proposed consent agreement with analysis In the Matter of Outdoor World Corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist in disposition of this proceeding.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended, 15 U.S.C. 45.

Donald S. Clark,

Secretary.

[FR Doc. 90-7190 Filed 3-28-90; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Board of Scientific Counselors, Agency for Toxic Substances and Disease Registry; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. appendix 2), the Agency for Toxic Substances and Disease Registry (ATSDR) announces the following committee meeting:

Name: Board of Scientific Counselors, ATSDR.

Time and Date: 8:30 a.m. to 5:30 p.m., April 19, 1990.

Place: Radisson Hotel Atlanta, Courtland and International Boulevard, Atlanta, Georgia 30303.

Status: Open.

Purpose: The Board of Scientific Counselors, ATSDR, advises the Administrator, ATSDR, on ATSDR programs to ensure scientific quality, timeliness, utility, and dissemination of results. Specifically, the Board advises on the adequacy of the science in ATSDR-supported research, emerging problems that require scientific investigation, accuracy and currency of the science in ATSDR reports and program areas to emphasize and/or to de-emphasize.

Agenda: The entire meeting will be open to the public. Written comments are welcome and should be received by the Executive Secretary prior to the opening of the meeting. The agenda will include a discussion of ATSDR's five-year applied research plan in support of health assessments. A report by the Board's working group on human exposure assessment will be presented. An update on ATSDR's initiative on minority populations and hazardous waste sites is also planned.

Contact Person for More Information: Charles Xintaras, Sc.D., Executive Secretary, Board of Scientific Counselors, ATSDR, Building 37, Mailstop E-28, 1600 Clifton Road NE., Atlanta, Georgia 30333, telephone: FTS 236-0700; commercial (404) 639-0700.

Dated: March 23, 1990.

Elvin Hilyer,

Associate Director for Policy Coordination.

[FR Doc. 90-7183 Filed 3-28-90; 8:45 am]

BILLING CODE 4160-70-M

Centers for Disease Control

National Committee on Vital and Health Statistics (NCVHS) Subcommittee On Ambulatory and Hospital Care Statistics; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that the NCVHS Subcommittee on Ambulatory and Hospital Care Statistics established pursuant to 42 U.S.C. 242k, section 306(k)(2), of the Public Health Service Act, as amended, announces the following meeting.

Name: NCVHS Subcommittee on Ambulatory and Hospital Care Statistics.

Time and Date: 9 a.m.-5 p.m., April 18, 1990.

Place: Room 337A, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

Status: Open.

Purpose: The purpose of this meeting is for the Subcommittee to discuss with departmental staff the need and optimal approach for undertaking a review and any revision of the Uniform Hospital Discharge Data Set. The Subcommittee will also address other aspects of its charge, as time permits.

Contact Person for More Information: Substantive program information as well as summaries of the meeting and a roster of Committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, NCVHS, room 2-12, Center Building, 3700 East West Highway, Hyattsville, Maryland 20782, telephone number (301) 436-7050.

Dated: March 22, 1990.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 90-7182 Filed 3-28-90; 8:45 am]

BILLING CODE 4160-18-M

Board of Scientific Counselors, National Institute for Occupational Safety and Health (NIOSH): Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), the Centers for Disease Control (CDC) announces the following Committee meeting.

Name: Board of Scientific Counselors, NIOSH.

Date: 8:30 a.m.-4:30 p.m., April 18, 1990.

Place: Appalachian Laboratory for Occupational Safety and Health, NIOSH, CDC, Conference Room 138, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505-2888.

Status: Open to the public, limited only by the space available.

Purpose: The agenda will include a report by the Director, NIOSH; fiscal year 1990 budget initiatives, and fiscal years 1991-1992

budget processes; Year 2000 Objectives for the Nation; a response to a Division of Surveillance, Hazard Evaluation and Field Studies, NIOSH site visit; a research needs report; a report of the Surveillance Subcommittee; and a NIOSH fiber committee report.

Agenda items are subject to change as priorities dictate.

The meeting is open to the public for observation and participation. Anyone wishing to make an oral presentation should notify the contact person listed below as soon as possible before the meeting. The request should state the amount of time desired, the capacity in which the person will appear, and a brief outline of the presentation. Oral presentations will be scheduled at the discretion of the Chairperson and as time permits. Anyone wishing to have a question answered during the meeting should submit the question in writing, along with his or her name and affiliation, through the contact person to the Chairperson. At the discretion of the Chairperson and as time permits, approprite questions will be asked of the speakers.

A roster of members and other relevant information regarding the meeting may be obtained from the contact person listed below.

Contact person: Roy M. Fleming, Sc.D., Executive Secretary, Board of Scientific Counselors, NIOSH, CDC, 1600 Clifton Road, NE., (D-30), Atlanta, Georgia 30333, telephone (404) 639-3343 or FTS 236-3343.

Dated: March 23, 1990.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 90-7184 Filed 3-28-90; 8:45 am]

BILLING CODE 4160-19-M.

National Committee On Vital and Health Statistics (NCVHS) Executive Subcommittee; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that the NCVHS Executive Subcommittee established pursuant to 42 U.S.C. 242k, section 306(k)(2), of the Public Health Service Act, as amended, announces the following meeting.

Name: NCVHS Executive Subcommittee.

Time and date: 9 a.m.—5 p.m., April 24, 1990.

Place: 2011 I Street, NW., Suite 200, Washington, DC 20006.

Status: Open.

Purpose: The purpose of this meeting is for the Subcommittee to review the full Committee and Subcommittees' Work Plans and to plan for the June 1990 NCVHS meeting.

Contact person for more information: Substantive program information as well as summaries of the meeting and a roster of Committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, NCVHS, room 2-12, Center Building, 3700 East West Highway, Hyattsville, Maryland 20782, telephone number (301) 436-7050.

Dated: March 23, 1990.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 90-7185 Filed 3-27-90; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 85D-0505]

RIN 0905-AB53

Draft Guideline for Reporting Adverse Experiences With Licensed Biological Products; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guideline to assist manufacturers in reporting adverse experiences with licensed biological products. FDA is making the draft guideline available for public comment to assist it in developing a final guideline. The draft guideline was prepared by FDA's Center for Biologics Evaluation and Research. The guideline, when issued in final form, may be relied on by manufacturers when reporting to FDA adverse experiences with licensed biological products.

DATES: Comments by May 29, 1990.

ADDRESSES: Submit written requests for single copies of the draft guideline to the Congressional, Consumer, and International Affairs Staff (HFB-142), Park Bldg., rm. 158, 5600 Fishers Lane, Rockville, MD 20857, 301-443-7532. Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments on the draft guideline to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document. The draft guideline and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: JoAnn M. Minor, Center for Biologics Evaluation and Research (HFB-130), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892, 301-295-8188.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a draft guideline to assist manufacturers in reporting to FDA adverse experiences with licensed biological products.

Elsewhere in this issue of the **Federal Register**, FDA is proposing to require manufacturers of licensed biological products (1) To report promptly to FDA information about any serious and unexpected adverse experiences associated with one of its biological products and any significant increase in the frequency of an adverse experience that is both serious and expected, and (2) to submit periodic reports on all other adverse biological product experiences.

The draft guideline will assist manufacturers (1) In completing Form FDA-1639 which is to be used in submitting adverse experience reports to FDA, (2) in obtaining information concerning adverse experiences, and (3) in submitting the 15-day Alert reports, followup reports, and periodic reports.

FDA is making this draft guideline available for public comment before making it the formal position of the agency. If, following the receipt of comments, the agency concludes that the draft guideline, as revised, reflects acceptable criteria for use in reporting adverse experiences with licensed biological products, the guideline will be made final, and FDA will announce its availability under § 10.90(b) (21 CFR 10.90(b)).

Section 10.90(b) provides for the use of guidelines to establish procedures of general applicability that are not legal requirements but are acceptable to the agency. A person who follows a guideline can be assured that his or her conduct will be acceptable to the agency. A person may also choose to use alternative procedures even though they are not provided for in the guideline. A person who chooses to do so may discuss the matter further with the agency to prevent an expenditure of money and effort for work that the agency may later determine to be unacceptable. Therefore, interested persons are encouraged to use this opportunity to submit comments on the draft guideline if they have suggestions for its revision. Interested persons are invited to comment on the entire draft guideline as it applies to biological products. These comments will be considered in determining whether amendments to, or revisions of, the draft guideline are warranted. The draft guideline consists of a guideline for reporting adverse drug reactions based on the requirements of 21 CFR 314.80 and an addendum that sets forth

differences specific to biological products.

Dated: December 24, 1989.

James S. Benson,

Acting Commissioner of Food and Drugs.

[FR Doc. 90-7116 Filed 3-28-90; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 90N-0120]

Drug Export; Seldane-D® Tablets

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Merrell Dow Pharmaceuticals, Inc., has filed an application requesting approval for the export of the human drug Seldane-D® (terfenadine and pseudoephedrine HC1) Tablets (extended release) to New Zealand.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Frank R. Fazzari, Division of Drug Labeling Compliance (HFD-313), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8073.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Merrell Dow Pharmaceuticals, Inc., 10123 Alliance Rd., P.O. Box 429553, has filed an application requesting approval for the export of the drug Seldane-D® (terfenadine and pseudoephedrine HC1) Tablets (extended release), to New Zealand. This product is used in the relief of symptoms associated with seasonal allergenic rhinitis such as sneezing, rhinorrhea, pruritus, lacrimation and nasal congestion. The application was received and filed in the Center for Drug Evaluation and Research on February 22, 1990, which shall be considered the filing date for purpose of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by April 9, 1990, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (section 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: March 20, 1990.

Daniel L. Michels,

Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 90-7186 Filed 3-28-90; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 90N-0119]

Drug Export; Tosufloxacin Tosylate Bulk

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Abbott Laboratories has filed an application requesting approval for the export of the human drug tosufloxacin tosylate bulk to Japan.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Frank R. Fazzari, Division of Drug Labeling Compliance (HFD-313), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8073.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Abbott Laboratories, One Abbott Park Rd., Abbott Park, IL 60064-3500, has filed an application requesting approval for the export of the drug tosufloxacin tosylate bulk, to Japan. This drug is indicated for use in the treatment of various infections caused by susceptible bacteria. The application was received and filed in the Center for Drug Evaluation and Research on January 25, 1990, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by April 9, 1990, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (section 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: March 20, 1990.

Daniel L. Michels,

Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 90-7187 Filed 3-28-90; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

[BPD-686-N]

Medicare and Medicaid Programs; ICD-9-CM Coordination and Maintenance Committee Meeting

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice announces the next meeting of the International Classification of Diseases, Ninth Revision, Clinical Modification (ICD-9-CM) Coordination and Maintenance Committee. The public is invited to participate in the discussion of the topic areas.

DATES: The meeting will be held on Monday April 23, 1990, from 9 a.m. to 4 p.m. Eastern Standard Time.

ADDRESSES: The meeting will be held in room 703A, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Patricia Robins (301) 966-9346.

SUPPLEMENTARY INFORMATION: The ICD-9-CM is the clinical modification of the World Health Organization's International Classification of Diseases, Ninth Revision. It is the coding system required for use by hospitals and other health care facilities in reporting both diagnoses and surgical procedures for Medicare, Medicaid, and all other health-related DHHS programs. The work of the ICD-9-CM Coordination and Maintenance Committee will allow this coding system to continue to be an appropriate reporting tool for use in Federal programs.

The Committee is composed entirely of representatives from various Federal agencies interested in the International Classification of Diseases (ICD) and its modification, updating, and use of Federal programs. It is co-chaired by the National Center for Health Statistics and the Health Care Financing Administration.

The Committee holds public meetings to present proposed coding changes and other educational issues. The meetings provide changes and other education issues. The meetings provide an opportunity for input concerning these issues to representatives of organizations active in medical coding, as well as physicians, medical record administrators, and other members of the public. The Committee encourages the public to participate in these meetings. After considering the comments presented at the public meetings, the Committee makes recommendations concerning the proposed changes to the Director of NCHS and the Administrator of HCFA for their approval.

At this meeting, the Committee will discuss: corticotomy, cricopharyngeal myotomy and pharyngeal diverticulectomy, primary membraneous cataract procedures, angioplasty with placement of stent, laparoscopic cholecystectomy, coronary atherectomy with and without percutaneous transluminal coronary angioplasty, mural thrombosis and thrombophlebitis, cocaine addicted newborns, bladder dysfunctions, nonallopathic lesions, complications affecting specific body system, admission for replacement of pacemakers, medical aftercare, and other topics.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program; No. 13.773, Medicare—Hospital Insurance Program; No. 13-774, Medicare—Supplementary Medical Insurance).

Dated: March 19, 1990.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

[FR Doc. 90-7205 Filed 3-28-90; 8:45 am]

BILLING CODE 4120-01-M

Office of Human Development Services

[Program Announcement No. 13600-901]

Availability of FY 1990 Funds and Request for Applications for the Head Start Multicultural Infusion Demonstration Network

AGENCY: Administration for Children, Youth and Families (ACYF), Office of Human Development Services (OHDS), HHS.

ACTION: Announcement of the availability of financial assistance and request for applications for demonstration projects.

SUMMARY: The Head Start Bureau of the Administration for Children, Youth and Families announces the availability of funds for competitive discretionary grants for a Multicultural Infusion Demonstration Network in Project Head Start. The purpose of this effort is to demonstrate the infusion of multicultural principles across all the program components and services of Head Start.

This announcement contains the grant application process for this three year demonstration project.

DATES: The closing date for receipt of grant applications is May 29, 1990.

ADDRESSES: Address applications to: Head Start Multicultural Infusion Demonstration Network, Office of Human Development Services, Grants and Contracts Management Division, room 341-F.2 Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Mary S. Lewis, (202) 245-0421 or E. Dollie Wolverton, (202) 245-0418.

SUPPLEMENTARY INFORMATION:

Part I: General Information

A. Program Purpose

The purpose of this program announcement is to inform all Head Start grantees and delegate agencies of the availability of funds to demonstrate how services to multicultural populations in Head Start can be delivered with parity to all groups served. Of the 448,464 children served in Head Start programs in FY 1988, 38 percent were black, 33 percent white, 22 percent Hispanic, 4 percent American Indian, and 3 percent Asian-American. The statutory authority for funding under this program announcement is 42 U.S.C. 9844.

Although most racial/ethnic minority children enrolled in Head Start are black or Hispanic, it is important that we also offer appropriate services to the other groups represented in our programs. Among these smaller groups, for example, are Southeast Asians, Middle Easterners, Haitians and other Islanders, most of whom are part of the recent surge of new immigrants and refugees to America.

Because we believe that every child and family member has a cultural identity which should be reflected in the Head Start program in relevant ways, we are interested in grant applications which address one or more of the cultural groups represented in Head Start and demonstrate how multicultural principles are infused in all aspects of the program. The draft "Principles of Head Start Multicultural Programming" as developed by the Head Start Multicultural Task Force in

December 1989 is included as appendix C. This statement serves as the basis of these demonstrations.

The Head Start Bureau solicits applications to identify, support, demonstrate and document a variety of successful approaches which would result in a variety of cultural enrichment modules, updated curricula, training approaches and administrative plans and processes which could be used universally to meet the needs of culturally diverse children and families, no matter how small their numbers. Such components and services could include services to children with diagnosed handicaps; services to facilitate parent involvement; health, social services and education component activities; parent and staff training, as well as administrative services.

Project staff will be invited to participate in an annual Head Start Bureau meeting of the multicultural demonstration grantees as an opportunity to exchange information, including successes and barriers encountered.

Staff from other Head Start grantees and delegate agencies will visit successful demonstration sites to see how selected grantees serving a variety of culturally diverse populations have reached this goal. In addition, successful grantees may assist other local Head Start grantees at their request and may present and disseminate their findings at selected state, regional, and national meetings. Since our purpose is to infuse the entire Head Start staff with an appreciation for and understanding of the multicultural concerns of all Head Start families, we are seeking a documentation of the process by which these selected Head Start grantees may have brought about organizational change in their efforts to serve their diverse populations more effectively.

Also, we are interested in the process by which Agency Directors, Executive Boards, Head Start Directors, Policy Councils and lead staff of the various components and services examine all administrative practices to remove any institutional racial or ethnic bias. For instance, a grantee or delegate agency serving a largely black population, including Haitian immigrants, might demonstrate how it accomodated to the different needs of such newcomers by providing training opportunities so that Haitian Head Start parents could be prepared for employment in all components of the program and at the same time assured acceptance by staff of the different cultural background and value system of Haitian families.

Another example pertains to our Head Start Migrant farm worker populations. Although the majority are Hispanic and Black, such mental health issues as the following could be addressed from a cultural perspective: the added stress of physical migration from State-to-State, self esteem for both parents and children, and family value systems as a source of strength.

Another example of the necessity to have a multicultural perspective is the constant challenge to grantees for ways to keep parents involved in Head Start programs. According to research findings, parent involvement is crucial to the child's retention of what is being learned in preschool and is one way to challenge growth in parenting. Traditionally, we have expected mothers to do the volunteering in Head Start yet in several cultural groups we serve such activity is seen as a father's role.

In addition, we are interested in how Head Start grantees develop and carry out the process of communication with non-English speaking families and others of minority cultures. The Head Start Bureau would like demonstrations of the process of communication with such families. How requirements for health services are communicated and made understandable to such families is one example. Another might be the need for parent involvement in the education program for the children. Still another could be the staffing changes required to meet the needs of new groups of culturally and linquistically different families. The administrative system changes as well as products or processes developed in each Head Start component are pertinent to this demonstration project.

We anticipate that grantees have specific curriculum modules for the education and health components to address and serve the needs of all the families whose backgrounds and cultural heritages differ from the majority of the American population. In the administration of such a Head Start program, we would expect to see how the aforementioned multicultural principles have been infused throughout the entire program as well as how program plans have accommodated issues arising from the annual community and component needs assessments in terms of hiring practices; recruitment strategies; and training plans for boards, staff and parents; plus involvement of the community in appropriate phases of the operation, including evaluation.

B. Available Funds

The level of Federal funding will not exceed $30,000 per grantee or delegate agency for each of three years.

Funds will be made available for each successful applicant to cover:

1. Appropriate staffing to give priority to multicultural issues in the grantee's program.

2. Travel and per diem for the Head Start Director and the appropriate staff person identified in Item 1 above, to attend one three-day national meeting in Washington, DC during each of the three years of this demonstration.

3. Some travel and per diem funds to assist grantees at grantee request or at national meetings at grantees discretion.

4. Some funds to assist grantees at their discretion in documenting and disseminating on-site what they have developed and demonstrated locally.

C. Eligible Applicants

Up to 15 Head Start grantees and delegate agencies which have already completed the infusion process in at least two components will be selected. Any Head Start grantee or delegate agency with the requisite multicultural experience may apply.

Grantee selection under this announcement will be made through a competitive review process and will be based on the "Evaluation Criteria" listed in part III of this announcement.

Part II. Specific Responsibilities

A. Responsibilities of the Head Start Grantee/Delegate Acency

Each grantee or delegate agency serving as part of this multicultural demonstration network will be expected to:

1. Conduct an exemplary program that can serve as a demonstration site where neighboring Head Start grantees/delegate agencies can observe bias-free multicultural services being provided to children and families.

2. Identify appropriate staff to serve during the key project period and to document the process of infusion of multicultural principles across Head Start components, services, and management.

3. Demonstrate methods, activities, and solutions for infusing and integrating multicultural concerns into all Head Start component and service areas.

4. Participate in training opportunities which will enhance the designated staff member's knowledge of effective multicultural approaches in a comprehensive child development program.

5. Prepare materials explaining activities, methods and processes by which the applicant achieved total infusion.

6. Submit quarterly program and fiscal reports in accordance with 45 CFR 74.73 or 92.41.

B. Recipient Share of the Project

Section 640(b) of the Head Start Act Pub. L. 97–35 requires that at least 20 percent of the total cost of Head Start projects come from sources other than the Federal government. The non-Federal share may be in cash or in-kind, fairly evaluated, including facilities, equipment, or volunteer services.

Part III. Criteria for Review and Evaluation of the Application

In considering how the grantee will carry out the responsibilities addressed under part II of this announcement, competing applications for financial assistance will be reviewed and evaluated against the following criteria:

A. Objectives and Need for Assistance (20 points)

The extent to which the applicant states the principal and subordinate objectives of the project. Supporting documentation or other testimonies from concerned interests other than the applicant may be used.

B. Results of Benefits Expected (30 points)

The extent to which the applicant identifies results and benefits to be derived. The anticipated contribution to policy or practice should be described.

C. Approach (30 points)

Outline a plan of action pertaining to the scope and the details of how the proposed work will be demonstrated for the project. Cite factors which might accelerate or decelerate the work and your reasons for taking this approach as opposed to others. Describe any unusual features of the project, such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvements. Provide for each assistance program quantitative projections of the accomplishments to be achieved, if possible. When accomplishments cannot be quantified, list the activities in chronological order to show the schedule of accomplishments and their target dates. Identify the kinds of data to be collected and maintained, and discuss the criteria to be used to evaluate the results and success of the project. Explain the methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified are being achieved.

List each organization, cooperator, consultant, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

D. Geographic Location (5 points)

Give a precise location of the project and area to be served by the proposed project. Maps or other graphic aids may be attached.

E. Staffing (15 points)

If applicable, provide the following information: for research and demonstration assistance requests, present a biographical sketch of the program director with the following information: Name, address, telephone number, background, and other qualifying experience for the project. Also, list the name, training and background for other key personnel engaged in the project. Describe the relationship between this project and other work planned, anticipated, or underway under Federal assistance.

Part IV. The Application Process

A. Availability of Forms

In order to be considered for a grant an application must be submitted on the attached Standard Form 424 with accompanying assurances and certifications. (Please note that the attached 424 forms are not the ones prescribed for regular Head Start grants.) Appendix A contains the complete application package.

Each application must be signed by an individual authorized to act for the applicant agency and to assume responsibility for the obligations imposed by the terms and conditions of the grant award. Applications must be prepared in accordance with the guidance provided in this announcement.

B. Application Submission

One signed original and two copies of the grant application, including all attachments, are required. Completed applications must be sent to: Head Start Multicultural Infusion Demonstration Network, Office of Human Development Services, Grants and Contracts Management Division, room 341–F.2 Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201. The program announcement number (13600–901) must be clearly identified on the application. Hand delivered applications will be accepted at the OHDS grants and contracts Management Division during the normal working hours of 8:30 a.m. to 5 p.m., Monday through Friday.

C. Closing Date for Submission of Applications

The closing date for the receipt of applications is May 29, 1990.

D. Deadline for Submission of Applications

1. *Deadlines.* Applications shall be considered as meeting an announced deadline if they are either:

a. Received on or before the deadline date at a place specified in the program announcement, or;

b. Sent on or before the deadline date and received by the granting agency in time for the independent review under Chapter 1–62. Applicants must be cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or the U. S. Postal Service. Private metered postmarks are not acceptable as proof of timely mailing.

2. *Late Applications.* Applications which do not meet the criteria in Paragraph A of this section are considered late applications. The granting agency shall notify each late applicant that its application will not be considered in the competition.

3. *Extension of Deadline.* The Administration for Children, Youth and Families (ACYF) may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc., or when there is widespread disruption of the mails. However, if ACYF does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicant.

E. Application Consideration

Applicants will be reviewed and scored against the evaluation criteria outlined in Section III. The review will be conducted in Washington, DC. Reviewers will be persons knowledgeable about the Head Start program, comprehensive child development services, and multicultural programming. Federal staff, and other experts, such as university staff or staff of child development projects, will serve as reviewers.

The results of the competitive review will be taken into consideration by the Associate Commissioner, Head Start Bureau, who, in consultation with ACYF regional officials, will recommend projects to be funded. The Commissioner of ACYF will make the final selection of the applicants to be funded.

The Commissioner may elect not to fund any applicants that have

management, fiscal, or other problems and situations which make it unlikely that they would be able to demonstrate effective multicultural Head Start services to other Head Start grantees. For example, this might apply to an applicant which has had large, chronic balances of unobligated funds due to poor management, or one that has failed to serve children in agreed upon numbers.

Successful applicants will be notified through the issuance of a Financial Assistance Award which sets forth the amount of funds granted, the terms and conditions of the grant, the effective date of the grant, the budget period for which support is given, the non-Federal share to be provided, and the total project period for which support is provided.

F. Paperwork Reduction Act of 1980

Under the Paperwork Reduction Act of 1980, Public Law 96–511, the Department is required to submit to the Office of Management and Budget (OMB) for review and approval any reporting and recordkeeping requirements including program announcements. This program announcement does not contain information collection requirements beyond those approved by OMB.

G. Executive Order 12372—Notification Process

This program is covered under Executive Order (E.O.) 12372, "Intergovernmental Review of Federal Programs," and 45 CFR part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and territories except Alaska, Idaho, Kansas, Minnesota, Nebraska, Virginia, American Samoa, and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs).

Applicants from these areas need take no action regarding E.O. 12372. Otherwise, applicants should contact their SPOC as soon as possible to alert them of the prospective application and to receive any necessary instructions. Applicants must submit any required material to the SPOC and indicate the date of this submittal (or date of contact if no submittal is required) on the SF 424, item 22a.

SPOCs have 120 days from the date of this instruction to comment on applications submitted under this announcement. Therefore, the comment period for State processes will end July 27, 1990, to allow time for OHDS to review, consider, and attempt to accommodate SPOC input. SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which they intend to trigger the "accommodate or explain" rule. When comments are submitted directly to OHDS, they should be addressed to: Department of Health and Human Services, Grants and Contracts Management Division, 200 Independence Avenue, SW., room 345–F, Hubert H. Humphrey Building, Washington, DC 20201. OHDS will notify the State of any applications received which have no indication that the State process has had an opportunity for review. A list of single points of contact for each State and territory is included at appendix B at the end of this announcement.

(Catalog of Federal Domestic Assistance Number 13.600, Project Head Start)

Dated: February 8, 1990.

Wade F. Horn,

Commissioner, Administration for Children, Youth and Families.

Approved: February 16, 1990.

Mary Sheila Gall,

Assistant Secretary for Human Development Services.

BILLING CODE 4130–01–M

APPENDIX A

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name	Organizational Unit
Address (give city, county, state, and zip code)	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A Increase Award B Decrease Award C Increase Duration

D Decrease Duration Other (specify):

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A State H Independent School Dist.
B County I State Controlled Institution of Higher Learning
C Municipal J Private University
D Township K Indian Tribe
E Interstate L Individual
F Intermunicipal M Profit Organization
G Special District N Other (Specify) _____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ – ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.)

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BUDGET INFORMATION — Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (4-88)
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SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:
23. Remarks	

SF 424A (4-88) Page 2
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INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A,B,C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A,B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary
Lines 1-4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

Lines 1-4, Columns (c) through (g.) (continued)

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 — Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i — Show the totals of Lines 6a to 6h in each column.

Line 6j - Show the amount of indirect cost.

Line 6k - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

INSTRUCTIONS FOR THE SF-424A *(continued)*

Line 7 – Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8-11 – Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) – Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) – Enter the contribution to be made by the applicant.

Column (c) – Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) – Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) – Enter totals of Columns (b), (c), and (d).

Line 12 — Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 – Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 – Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 – Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16 - 19 – Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 – Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 – Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 – Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 – Provide any other explanations or comments deemed necessary.

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5 Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

BILLING CODE 4130-01-C

U.S. Department of Health and Human Services Certification Regarding Drug-Free Workplace Requirements Grantees Other Than Individuals

By signing and/or submitting the application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR part 76, subpart F. The regulations, published in the January 31, 1989 Federal Register, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when HHS determines to award the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

The grantee certifies that it will provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing a drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and,

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and,

(2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

(e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;

(f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR part 76, certifies to the best of its knowledge and believe that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

(b) Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services' (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (To Be Supplied to Lower Tier Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declard ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

(b) Where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Lobbying; Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congess, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Organization

Authorized Signature Title Date

Note: If Disclosure Forms are required, please contact: Mr. William Sexton, Deputy Director, Grants and Contracts Management Division, room 341F, HHH Building, 200 Independence Avenue, SW., Washington, DC 20201-0001.

Appendix B—Executive Order 12372—State Single Points of Contact

Alabama

Mrs. Moncell Thornell, State Single Point of Contact, Alabama Department of Economic and Community Affairs, 3465 Norman Bridge Road, Post Office Box 250347, Montgomery, Alabama 36125–0347, Tel. (205) 284–8905

Alaska

None

Arizona

Mrs. Janice Dunn, ATTN: Arizona State Clearinghouse, 1700 West Washington, Fourth Floor, Phoenix, Arizona 85007, Tel. (602) 542–5004

Arkansas

Mr. Joseph Gillesbie, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Tel. (501) 371–1074

California

Loreen McMahon, Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Tel. (916) 445–0613

Colorado

State Single Point of Contact, State Clearinghouse, Division of Local Government, 1313 Sherman Street, Room 520, Denver, Colorado 80203, Tel. (303) 866–2156

Connecticut

Under Secretary, ATTN: Intergovernmental Review Coordinator, Comprehensive Planning Division, Office of Policy and Management, 80 Washington Street, Hartford, Connecticut 06106–4459, Tel. (203) 566–3410

Delaware

Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, Dover, Delaware 19903, Tel. (302) 736–3326

District of Columbia

Lovetta Davis, State Single Point of Contact, Executive Office of the Mayor, Office of Intergovernmental Relations, Room 416, District Building, 1350 Pennsylvania Avenue N.W., Washington, DC 20004, Tel. (202) 727–9111

Florida

George H. Meier, Director of Intergovernmental Coordination, Single Point of Contact, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32399–0001, Tel. (916) 445–0613

Georgia

Charles H. Badger, Administrator, Georgia State Clearinghouse, 270 Washington Street SW., Atlanta, Georgia 30334, Tel. (404) 656–3855

Hawaii

Harold S. Masumoto, Acting Director, Office of State Planning, Department of Planning and Economic Development, Office of the Governor, State Capitol, Honolulu, Hawaii 96813, Tel. (808) 548–3016 or 548–3085

Idaho

None

Illinois

Tom Berkshire, State Single Point of Contact, Office of the Governor, State of Illinois, Springfield, Illinois 62706, Tel. (217) 782–8639

Indiana

Frank Sullivan, Budget Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Tel. (317) 232–5610

Iowa

Steven R. McCann, Division of Community Progress, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Tel. (515) 281–3725

Kansas

None

Kentucky

Robert Leonard, State Single Point of Contact, Kentucky State Clearinghouse, 2nd Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, Tel. (502) 564–2382

Louisiana

Robin Hote, Division of Administration, Office of State Clearinghouse, P.O. Box 94095, Baton Rouge, LA 70804–9095, (504) 342–7006

Maine

State Single Point of Contact, ATTN: Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, Tel. (207) 289–3261

Maryland

Mary Abrams, Director, Maryland State Clearinghouse, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201–2365, Tel. (301) 225–4490

Massachusetts

State Single Point of Contact, ATTN: Beverly Boyle, Executive Office of Communities and Development, 100 Cambridge Street, Room 904, Boston, Massachusetts 02202, Tel. (617) 727–3253

Michigan

Michelyn Pasteur, Deputy Director, Local Development Services, Department of Commerce, P.O. Box 30225, Lansing, Michigan 48903, Tel. (517) 375–1838

Note: Please direct correspondence to: Manager, Federal Project Review System, 6500 Mercantile Way, Suite 2, Lansing, Michigan 48911, Tel. (517) 334–6190.

Minnesota

None

Mississippi

Cathy Mallette, Governor's Office of Federal State Programs, Department of Planning and Policy, 421 West Pascagoula Street, Jackson, Mississippi 39206, Tel. (601) 960–4282

Missouri

Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, Division of General Services, P.O. Box 809, Room 430, Truman Building, Jefferson City, Missouri 65102, Tel. (314) 751–4834

Montana

Deborah Davis, State Single Point of Contact, Intergovernmental Review Clearinghouse, c/o Office of Lieutenant Governor, Capitol Station, Room 210—State Capitol, Helena, Montana 59620, Tel. (406) 444–5522

Nebraska

None

Nevada

Ms. Jean Ford, Nevada Office of Community Services, Capitol Complex, Carson City, Nevada 89710, Tel. (702) 885–4420

Note: Please direct correspondence and questions to: John Walker, Clearinghouse Coordinator, Tel. (702) 885–4420.

New Hampshire

Robert W. Varney, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review Process/James E. Bieber, 2½ Beacon Street, Concord, New Hampshire 03301, Tel. (603) 271–2155

New Jersey

Mr. Barry Skokowski, Director, Division of Local Government Services, Department of Community Affairs, CN 803, Trenton, New Jersey 08625–0803, Tel. (609) 292–6613

Note: Please direct correspondence and questions to: Nelson S. Silver, State Review Process, Division of Local Government Services, CN 803, Trenton, New Jersey 08625–0803, Tel. (609) 292–9025.

New Mexico

Dean Olson, Director, Management & Program Analysis Division, Department of Finance & Administration, Room 424, State Capitol Building, Santa Fe, New Mexico 87503, Tel. (505) 827–3885

New York

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Tel. (518) 474–1605

North Carolina

Mrs. Chrys Baggett, Director, Intergovernmental Relations, N.C. Department of Administration, 116 W. Jones Street, Raleigh, North Carolina 27611, Telephone (919) 733–0499

North Dakota

William Robinson, State Single Point of Contact, Office of Intergovernmental Affairs, Office of Management and Budget, 14th Floor, State Capitol, Bismarck, North Dakota 58505, Tel. (701) 224–2094

Ohio

Larry Weaver, State Single Point of Contact, State/Federal Funds Coordinator, State

Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus, Ohio 43266–0411, Tel. (614) 466–0698

Oklahoma

Don Strain, State Single Point of Contact, Oklahoma Department of Commerce, Office of Federal Assistance Management, P.O. Box 26980, Oklahoma City, Oklahoma 73126, Tel. (405) 843–9770

Oregon

Attn: Delores Streeter, State Single Point of Contact, Intergovernmental Relations Division, State Clearinghouse, 155 Cottage Street, NE., Salem, Oregon 97310, Tel. (503) 373–1998

Pennsylvania

Laine A. Heltebridle, Spec. Asst., Pennsylvania Intergovernmental Council, P.O. Box 11880, Harrisburg, Pennsylvania 17108, Tel. (717) 783–3700

Rhode Island

Daniel W. Varin, Associate Director Statewide Planning Program, Department of Administration, Division of Planning, 265 Melrose Street, Providence, Rhode Island 02907, Tel. (401) 277–2656

Note: Please direct correspondence and questions to: Review Coordinator, Office of Strategic Planning.

South Carolina

Danny L. Cromer, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street, Room 477, Columbia, South Carolina 29201, Tel. (803) 734–0435

South Dakota

Susan Comer, State Clearinghouse Coordinator, Office of the Governor, 500 East Capitol, Pierre, South Dakota 57501, Tel. (605) 773–3212

Tennessee

Charles Brown, State Single Point of Contact, State Planning Office, 500 Charlotte Avenue, 309 John Sevier Building, Nashville, Tennessee 37219, Tel. (615) 741–1676

Texas

Thomas C. Adams, Office of Budget and Planning, Office of the Governor, P.O. Box 12428, Austin, Texas 78711, Tel. (512) 463–1778

Utah

Dale Hatch, Director, Office of Planning and Budget, State of Utah, 116 State Capitol Building, Salt Lake City, Utah 84114, Tel. (801) 533–5245

Vermont

Bernard D. Johnson, Assistant Director, Office of Policy Research & Coordination, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Tel. (802) 828–3326

Virginia

None

Washington

Catherine Townley, Coordinator, Intergovernmental Review Process, Department of Community Development, 9th and Columbia Building, Olympia, Washington 98504–4151, Tel. (206) 753–4978

West Virginia

Mr. Fred Cutlip, Director, Community Development Division, Governor's Office of Community and Industrial Development, Building #6, Room 553, Charleston, West Virginia 25305, Tel. (304) 348–4010

Wisconsin

James R. Klauser, Secretary, Wisconsin Department of Administration, 101 South Webster Street, GEF 2, P.O. Box 7864, Madison, Wisconsin 53707–7864, Tel. (608) 266–1741

Note: Please direct correspondence and question to: Thomas Krauskopf, Federal-State Relations Coordinator, Wisconsin Department of Administration.

Wyoming

Ann Redman, State Single Point of Contact, Wyoming State Clearinghouse, State Planning Coordinator's Office, Capitol Building, Cheyenne, Wyoming 82002, Tel. (307) 777–7574

American Samoa

None

Guam

Michael J. Reidy, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam, 96910, Tel. (671) 472–2285

Northern Mariana Islands

State Single Point of Contact, Planning and Budget Office, Office of the Governor, Saipan, CM, Northern Mariana Islands 96950

Palau

None

Puerto Rico

Patria Custodio/Israel Soto Marrero, Chairman/Director, Puerto Rico Planning Board, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940–9985, Tel. (809) 727–4444

Virgin Islands

Jose L. George, Director, Office of Management and Budget, No. 32 & 33 Kongens Gade, Charlotte Amalie, V.I. 00802, Tel. (809) 774–0750

Appendix C—Draft Principles for Multicultural Programming in Head Start

Effective Head Start programming requires understanding, respect, and responsiveness to the cultures of all people but particularly to those of enrolled children and families. Since its inception in 1965, Head Start has recognized the importance of nurturing the self-esteem of each child and family in the program. The Head Start Program Performance Standards stress the importance of enhancing the sense of dignity and self-worth of each child and his/her family. Head Start grantees seek to develop approaches which support this humanizing goal. Children and their families come to Head Start rooted in a culture which gives them meaning and direction. The same statement is true of the staff and administrators who work in Head Start programs. This culture is a set of rules that governs their "world," organizes their physical and social interactions, and shapes their understanding and perceptions of behavior and ideas. Because the child's culture and family provide the foundation upon which the child's social competence is developed, Head Start grantees must be sensitive to the role culture plays in child development. For each Head Start child to become a world citizen through multicultural programming is our hope. For each parent and staff member to grow too is our goal as well. The Head Start program goals are the foundation for these principles.

Section 1304.1–3 of the Head Start Program Performance Standards (45 CFR–1304) states:

(a) The Head Start Program is based on the premise that all children share certain needs, and that children of low-income families, in particular, can benefit from a comprehensive developmental program to meet those needs. The Head Start Program approach is based on the philosophy that:

(1) A child can benefit most from a comprehensive, interdisciplinary program to foster development and remedy problems as expressed in a broad range of services, and that

(2) The child's entire family, as well as the community, must be involved. The program should maximize the strengths and unique experiences of each child. The family, which is perceived as the principal influence on the child's development, must be a direct participant in the program. Local communities are allowed latitude in developing creative program designs so long as the basic goals, objectives and standards of a comprehensive program are adhered to.

(b) The overall goal of the Head Start program is to bring about a greater degree of social competence in children of low-income families. By social competence is meant the child's everyday effectiveness in dealing with both present environment and later responsibilities in school and life. Social competence takes into account the interrelatedness of cognitive and intellectual development, physical and mental health, nutritional needs, and other factors that enable a developmental approach to helping children achieve social competence. To the accomplishment of this goal, Head Start objectives and performance standards provide for:

(1) The improvement of the child's health and physical abilities, including appropriate steps to correct present physical and mental problems and to enhance every child's access to an adequate diet. The improvement of the family's attitude toward future health care and physical abilities.

(2) The encouragement of self-confidence, spontaneity, curiosity, and self-discipline which will assist in the development of the child's social and emotional health.

(3) The enhancement of the child's mental processes and skills with particular attention to conceptual and communications skills.

(4) The establishment of patterns and high expectations for success in the child, which will create a climate of confidence for present and future learning efforts and overall development.

(5) An increase in the ability of the child and the family to relate to each other and to others.

(6) The enhancement of the sense of dignity and self-worth within the child and his family.

As the entire Head Start community implements these principles in policies, procedures and practices, the development of social competence in children will be supported while the critical role of the family will be acknowledged and reinforced. As a result, the child, the family and the Head Start staff because participants in a world community. Multicultural or culturally diverse programming celebrates individual differences. The cultural, racial and ethnic composition of the Head Start community is becoming increasingly diverse as Head Start reflects the demographic changes in America. To be successful, the Head Start community must understand and commit to appropriate multicultural programming which builds upon each child's culture and prepares the child to respect and deal effectively with other cultures and many differences among individuals. Children enrolling in Head Start will interact—in the future, if not today—with others unlike themselves in this diverse society.

Head Start grantees must address issues of cultural relevance and diversity if they are to help children achieve social competence and reach their full potential. Cultural relevance supports each child's background as an integral part of the child. This must be respected and supported by all who work with cultural issues. Culturally relevant programming in all Head Start components and services incorporates approaches that validate and build upon the culture and strengths of the child and his/her family. Such efforts require that policies, practices, and personal philosophies be examined for bias. This examination process is continuous and central to program development and evaluation.

The following principles form the framework for multicultural programming:

Principles of Multicultural Programming

Principles Supporting the Framework

1. Every individual is rooted in culture and language.

2. The cultural groups represented in the communities and families of each Head Start program are the primary sources for culturally relevant programming.

3. Culturally relevant and diverse programming requires learning accurate information about the culture of different groups and discarding stereotypes.

4. Cultural relevance is to be addressed along with developmental levels and learning styles of children in selecting appropriate curriculum activities and materials.

5. Every individual has the right to maintain his or her own identity while acquiring the skills required to function in our diverse society.

6. Language and culture are joined for all of us. This is especially true for children whose language is other than English.

7. Culturally relevant programming requires staffing reflective of the community and families served.

8. Culturally diverse programming for children includes enabling children to develop an awareness of, respect for, and appreciation of individual cultural differences and it is beneficial to and essential for the development of social competence.

9. Culturally relevant and diverse programming examines and challenges institutional biases.

10. Culturally relevant and diverse programming and practices are incorporated in all components and services.

Discussion

1. Every Individual is Rooted in a Culture. Culture includes a set of rules that governs an individual's or group's "world", that organizes their physical and social interactions, and that provides values and directions for how behaviors and ideas are perceived.

"* * * each of us has a culture, and to assume I don't is a form of arrogance: my tradition is *the* way of being human and only those other, different, quaint people have 'culture.' I am as embedded in my culture as a fish is in water. The fish doesn't know about nonwater unless it gets caught, and I am unlikely to recognize the distinctive elements of my culture unless I have opportunities to compare it with other cultures—other ways of being human. Living in a multicultural society and world, I must learn to make the comparison—to become aware that any culture represents only one set of many possible choices, all of them valid ways of being human."

"Culture is everything that makes up the life of a people—the objects they use in daily life, the ways they conduct their lives, and the deep-seated and often unconscious reasons they do things in a certain way (their values)." Though culture is passed on from generation to generation, it is dynamic and evolves and adapts to the contemporary environment. Culture is not overtly taught, but rather acquired through living. Culture is rooted in people's emotional commitments and is a moral and aesthetic system, i.e., culture involves people investments in particular actions and attitudes as "the right way" and others as "the wrong way." It is above all about valued relationships, about what is a worthy person, and about valued ways of making valued things. It is a shared gyroscope that guides people's lives and makes those lives meaningful. Families must be supported in their cultural identity in order to foster it in their children.

Culture affects a child's learning style, values, and self-concept. In order to develop positive self-esteem, children need to be recognized as valued individuals. Head Start, in its goal of bringing about a greater degree of social competence in children, ensures the recognition, value, and respect of all cultural backgrounds. Successful programs for children respect and incorporate the child's contemporary culture. Children must not be expected to sacrifice their own cultural identity, but rather to take pride in themselves, their families and their culture.

2. The Cultural Groups Represented in the Communities and Families of the Head Start Program are the Primary Source for Culturally Relevant Programming. The Head Start Program Performance Standards mandate that the programs be reflective of the communities they serve. The cultural groups represented by the families and the community served by the Head Start are the best source for culturally relevant information, which should be incorporated into all aspects of the program. Involving parents and community members is recommended for collecting accurate information about the community and its needs. Such culturally diverse programming idealizes and builds upon that which is most familiar to each child and valued by significant others in his/her life; namely aspects of that family's own culture. In doing so it enhances learning and extends the learning more fully to the home environment.

3. Culturally Relevant and Diverse Programming Requires Learning Accurate Information About the Culture of Different Groups and Discarding Cultural Stereotypes. Stereotypes and misinformation about cultures of different groups interfere with growth, communication, and respect. Stereotypes are learned; they are perceived and nourished by ignorance, lack of information and interaction. Culture can influence values, perceptions, and behaviors. Minority groups also may share stereotypes that can affect perception of themselves and of other groups.

Individuals at every level of program operation should make a commitment to improve their program by acquiring accurate information about cultural groups, examining institutional and personal biases, and discarding stereotypes and misinformation. Accurate information about different cultural groups can be obtained best by talking directly with a variety of individuals from that cultural group. Books written by individuals within cultural groups can be another method. It is esential to keep in mind that individual differences exist within cultures and therefore care must be taken not to stereotypes everyone within a particular culture based on information obtained by one source.

4. Cultural Relevance Is To Be Addressed Along With Developmental Levels and Learning Styles of Children in Selecting Appropriate Curriculum Activities and Materials. Children will be more open to learning when their culture is respected and reflected within all aspects of the Head Start Program. Acquiring new skills should not be a separate process from cultural programming. Children need to learn about their cultures as they learn in all the other aspects of development. Cultural relevance can enrich activities designed to facilitate the children's communication and language development, creativity, cognitive, and physical, social, and emotional development.

5. Every Individual Has the Right To Maintain His/Her Own Identity While

Acquiring the Skills Required to Function in Our Diverse Society. In this way, each person's development is enhanced; new skills required to cope with diversity are learned more readily. A program which recognizes and honors the child's and family's cultural identify contributes greatly to a child's self-esteem and to the development of a clear and positive personal and social identity. This in turn contributes to the child's learning and to his/her capacity to fully engage the world.

This approach provides an opportunity for children to explore their own cultural uniqueness in a safe, non-threatening manner. All children have the right to develop skills which allow them to recognize unfair practices and respond to them in an active and effective manner. Children have the right to acquire the skills necessary to function effectively in a diverse society. Ultimately, children have the right to grow up in a society where differences exist, can be maintained and are respected.

6. Language and Culture Are Joined for All of Us. This Is Especially True for Children Whose Primary Language Is Other Than English. Children whose first language is not English may need special attention. Children acquire a first language from their families and the people who care for them. Language acquisition is a natural process based on discovering meanings in what is spoken. For children with limited or no English, the most effective program is one which continues to develop the child's home language and introduces acquisition of English language skills.

Learning in the preschool years is best facilitated through the home language. Staff who speak the language of the child can promote the development of the first language most effectively. At the same time, recognizing the need for the child to become proficient in English, the acquisition of English language skills must be initiated. An effective and appropriate manner is by a natural approach rather than by formal instruction. Research indicates that developing and maintaining a child's home language supports and facilitates the learning of the second language. It is best accomplished without translation and with the recognition of the need to develop understanding before speaking. Staff and parents should be aware of these findings and build upon first language skills. Therefore

- Staffing patterns and program resource people must reflect the language of the families being served;
- Parents sometimes need to be helped to understand the value of the first language as a foundation for second language acquisition;
- Staff should be trained in techniques for second language acquisition;
- The child whose native language is other than English must be viewed as fortunate since having more than one language is an asset in today's world;
- Any process of child assessment should be conducted in the child's primary language.
- Staff should examine their own biases toward regional variations of a language and dialects that the children use and recognizes the primary language as an equally valid way of communication;
- It is valuable for children whose primary language is English to learn a second language. The fact that one out of every five job opportunities currently available relates to speaking a second langauge is pertinent. A substantial number of the world's children today are raised bilingually, because their societies recognize that communication among nations is critical for their economic and political survival. Only recently, however, some North Americans who are native speakers of English have also come to appreciate the advantages of fluency in a second language.

7. Multicultural Programming Requires Staffing Reflective of the Community and Families Served. Head Start Program Performance Standards for the Education Component require grantees to have staff and program resources reflective of the racial and ethnic population of the children in the program (1304.2–2[c][2]). Grantees must make efforts to extend this principle to all components and services. These staffing priorities also must be reflected in the delivery of health, nutrition, mental health, parent involvement, social service, and mainstreaming the handicapped, as well as at all levels of the administration of the program. The "quality" aspect of the program need not be compromised in order to implement this principle. By incorporating cultural relevancy and providing staff who speak primary language of enrolled children and families, the foundation of a good Head Start Program is laid. Individualized staff development, support services, effective recruiting, staff utilization and a pertinent in-service training plan are required in order to fully incorporate this principle and maintain a program of overall excellence and quality.

8. Multicultural Programming for Children Includes Enabling Children To Develop an Awareness of, Respect for, and Appreciation for Individual Differences and It Is beneficial to All Children. Very concrete experiences, celebrating individual differences, contribute to children's understanding, acceptance, and respect for others who are different. Diversity within each classroom and home-based socialization session, needs to be the starting point for discussions and activities about individual differences. Emphasis on what is happening with the children themselves facilitates the beginning of understanding and acceptance of differences and contributes to the development of social competence in Head Start children.

Young children's misconceptions about people may be based on their own limited experience and what they see modeled by the adults around them. Therefore, "in order to teach young children to overcome any inappropriate response or behaviors triggered by cultural differences," adults must intervene appropriately and immediately, problem solve with children, and honestly answer questions regarding diversity. It is essential that multicultural activities to enable children to learn more about other cultures and people be delivered in an appropriate manner. Contemporary cultures should be integrated into the everyday environment and activities, rather than teaching cultures as a separate one-a-week or one a year activity. This type of approach, the "tourist approach"[1] trivializes cultures and other people and may promote stereotypes by focusing only on obvious artifacts, traditions, and celebrations which often lock people in the past and to a particular country. Children who have encountered this type of approach have gained little information about differences within cultures, about people and their contemporary cultures in the United States, and have not been given skills to deal with bias and institutional "isms" (i.e., racism, classism, handcapism).

Our goal is to develop capacities in the child to help him/her to communicate adaptively with people who are culturally different, and to enrich the child's own life through active engagement with the persons and works of other cultures. This is particularly important given the multicultural reality of our country and the increasing interdependence of the world's cultures.

9. Culturally Relevant and Diverse Programming Examines and Challenges Institutional Biases. Institutional biases are values or practices which favor one group or culture, by race, sex, income, physical attributes, or age. Institutional biases are reflected in practices and behaviors of the dominant group which devalue minority groups and cultures. Institutional biases can be reflected in program design. Community needs assessment, child assessment, program evaluation, curriculum, health requirements, dress codes, language being spoken, other means of communication and parent involvement practices should be viewed for institutional bias. They may be obvious and intentional, or they may be subtle and unintended. Wherever they exist or whatever the intent, they are harmful and unacceptable. Multicultural programming requires that staff, parents, and the community examine, challenge, and work to eliminate institutional bias.

Children as well, must be given skills to deal with bias. Appropriate or effective multicultural programming directly addresses issues of bias and stereotypes by enabling children to stand up for themselves and others when confronted with biased situations. Children's critical thinking skills about stereotypes must be enhanced by providing them opportunities to develop concepts of fairness and empathy. Bias and discriminating behaviors will not go away if ignored. Children infer tacit acceptance of behaviors which are ignored. Therefore, an active and integrative approach *must* be incorporated into all aspects of programming, "if children are to grow up with the attitudes, knowledge, and skills necessary for effective living in a complex, diverse world * * *"[2]

10. Culturally Relevant and Diverse Programming and Practices Are Incorporated in All Components and Services and Are Not Limited to the Classroom. Multicultural programming may have been limited in the past to the education component. Head Start is a comprehensive program, however, and

[1] Sparks, Louise-Derman, Anti-Bias Curriculum, NAEYC, Washington, DC, 1989, p. 57.

[2] Sparks, Louise-Derman, Anti-Bias Curriculum, NAEYC, Washington, DC, 1989, p. 57.

all components provide services to and impact on children and families. Cultural differences, stereotypes, and biases can be found in all components. To achieve Head Start goals and maximize child and family development, these principles must not be limited to the educational components but must be applied to all aspects of the program.

Conclusion

Appropriate multicultural programming is imperative in order to fully achieve Head Start goals. It requires scrutinizing all aspects of program operations and self-examination by program staff. It also requires identifying and celebrating differences and coordinating with community organizations and elementary schools. In many instances, the implementation of these principles will require leadership, courage, change, risk-taking, training, and resources.

Implementing Head Start programs which incorporate a multicultural perspective throughout all components and services can be accomplished by commitment, support, and leadership of Head Start grantees, Regional and National administration for Children, Young, and Families offices. The result will be long lasting and valuable for all of us who will live in tomorrow's global village.

[FR Doc. 90-7127 Filed 3-28-90; 8:45 am]

BILLING CODE 4130-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. N-90-3048]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal. This information collection is published in conjunction with the Interim Final Rule—Additional Review Requirements for HUD Coinsurance Programs.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; telephone (202) 755-6500. This is not a toll-free number. Copies of the documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35). It is also requested that OMB complete its review within five working days.

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, or reinstatement, and (9) the telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Sec. 3507, Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: March 20, 1990.

Peter Monroe,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

Submission of Proposed Information Collected to OMB

Proposal: Reporting Requirements in the Coinsurance Program.

Office: Housing.

Description of the need for information and its proposed use: This information collection will enable HUD to monitor on an ongoing basis the compliance of coinsuring lenders with the requirements of the program. The information will enable HUD to make sure prudent underwriting practices are adhered to by the coinsuring lenders during the restructuring of multifamily insurance and will assist the Department in protecting the FHA fund from future losses. All of the documents included in this information collection have already been cleared under OMB Clearance Numbers 2502-0331 and 2502-0375. This information collection will require minimal increase in burden hours since this information is already collected and maintained by the coinsuring lender.

Form numbers: 1. A copy of the firm commitment, including any financing commitment if separate from the firm commitment. The suggested format of the firm commitment provides language that must be included in the firm commitment. The lender is free to reproduce the format on company letterhead and may add language as long as that language does not conflict with HUD requirements and guidelines.

2. All processing forms to include those forms and formats listed below plus any additional forms, formats and analyses used by the lender that are pertinent to the underwriting process.

3. Form HUD 2530 Clearance—Previous Participation Clearance.

4. Copies of appraisals (including formal narrative appraisal, if available) and income and expense analysis:

a. Form HUD 92264, Rental Housing—Project Income Analysis and Appraisal.

b. Form HUD 92264A, Supplement to Project Income and Appraisal.

c. Form HUD-92274, Operating Expense Analysis Worksheet.

5. Market analysis, reports and information—Form HUD 92273, Estimate of Market Rents by Comparison.

6. Financial statements and analyses—Form HUD 92410, Statement of Profit and Loss and Balance Sheet for Section 223(f) projects.

7. Credit reports and bank and trade references—Form HUD 92417, Personal Financial and Credit Statement.

8. Copies of verification of debt.

9. Engineering and cost studies:

a. Form FHA 2325, Cost Estimate/Feasibility Stage

b. Form FHA 2326, Project Cost Estimate

c. Form FHA 2326A, Cost Estimate Worksheet

10. Analyses of construction and rehabilitation requirements. There is no suggested format. The lender's analyses will depend on issues unique to the proposed project.

11. Plans and specifications—including AIA201 and Form FHA 2554, Supplemental General Conditions.

12. Verification of rent roll (Section 223(f)) only. A rent roll certified by the mortgagor must disclose the information shown in the Format Rent Roll. The lender may require additional information about occupancy and other rent related issues. At a minimum, however, the information shown on the Format Rent Roll must be submitted by the mortgagor to the lender.

13. Certificate of Need/Alternate Study, if required (Section 232 only), Form HUD 02567HF, Certificate of Need for Nursing Home Assurance of Enforcement of State Standards.

14. Report and recommendation from the Residential Care Coordinator on the proposed project (Section 232 only).

15. Analysis of proposed residential care operations and management (Section 232 only)—There is no suggested format. The size and content of the analysis will vary, depending on project issues.

16. A narrative summary evaluating the various underwriting aspects of the project, prepared and signed by the Chief Underwriter. There is no suggested format. The size and content of the summary will vary, depending on the project issues.

Respondents: Lenders that have received approval to participate in the Section 223(f), Section 221(d), and Section 232 coinsurance programs.

Frequency of submission: Each time the lender wants to issue a loan commitment. Frequency varies according to loan volume.

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Reporting burden:	35		4		2		280

Status: NEW

Contact: Matt Andrea, HUD (202) 755-4956; John Allison, OMB (202) 395-6880

Dated: March 20, 1990.

Supporting Statement—Reporting Requirements for Coinsurance Program Precommitment Reviews

1.a. *Explain the circumstances that make the collection of information necessary. Include identification of any legal or administrative requirements that necessitate the collection.* The coinsurance program was designed to provide opportunity for a public and private partnership that would be a major vehicle in the delivery of multifamily mortgage insurance programs. The essential premise of the coinsurance program is the delegation of HUD's normal processing and underwriting functions to HUD-approved coinsuring lenders in exchange for the lenders sharing in the mortgage risk. However, the program has experienced an unacceptable level of defaults and losses, and it has become apparent that the program is structurally flawed.

On January 17, 1990, Secretary Kemp announced that HUD would initiate rulemaking to terminate the coinsurance program and replace it with a modified full insurance program. Until the coinsurance program is terminated, HUD finds it necessary and prudent to require precommitment reviews for all coinsured loans to protect the FHA insurance fund from further losses due to improper underwriting.

The requirement for program-wide precommitment reviews is contained in the attached interim rule, "Additional Reviews Requirements for HUD Coinsurance Programs," and in Coinsuring Lender Letters 90-1 and 90-2. These issuances require all coinsuring lenders to submit their processing and underwriting for coinsured loans to HUD for review and approval before they can issue legally-binding commitments. While HUD has required precommitment reviews as an integral part of the lender approval process and when lenders are on probation, this is the first time precommitment reviews have been required "across the board" for all coinsuring lenders. These precommitment reviews will enable HUD to ascertain that decisions made by lenders are consistent with underwriting guidelines set forth by HUD and that technical processing is in accordance with the requirements of the coinsurance program. The interim rule and coinsuring lender letters require all lenders participating in the Section 223(f), Section 221(d) and Section 232 programs to submit certain documents specified in the Attachment to Coinsuring Lender Letter 90-2. The documents required in this information collection have been cleared under OMB Clearance Numbers 2502-0331 and 2502-0375. The burden hours associated with this request are minimal and consist of the lenders' staff time needed to assemble and duplicate the requested documents and mail those documents to HUD Headquarters and to the HUD Field Office in whose jurisdiction the project is located.

b. *Statutory Authority.* Section 244 of the National Housing Act (12 USC 1715z-9) authorities HUD to coinsure mortgages provided the lender carries out (subject to audit, exception or review) processing, underwriting, loan servicing, and management oversight responsibilities required by HUD.

c. *Regulatory Authority.* 24 CFR 255.102(b)(9) of the 223(f) coinsurance regulations requires the lender to abide by all applicable requirements issued by the Commissioner for performing its functions. The same requirement for the 221(d) Coinsurance program is in 24 CFR 251.102(b)(9), and the requirement for the 232 Coinsurance program is in 24 CFR 252.102(b)(11). Specific regulatory authority for precommitment reviews for all coinsured loans is contained in §§ 251.301(f), 251.301(f) and 255.301(f) of the interim rule.

2. *Indicate how, by whom, and for what purpose the information is to be used and the consequence to Federal program or policy activities if the collection of information was not conducted.* The documents listed below will be used by HUD Headquarters and Field Office staff to screen the underwriting of all coinsurance mortgage applications for which a legally binding Conditional or Firm Commitment would be issued after January 16, 1990.

1. A copy of the Firm Commitment, including any financing commitment if separate from the Firm Commitment. The suggested format of the firm provides language that must be included in the Firm Commitment. The lender is free to reproduce the format on company letterhead and may add language as long as language does not conflict with HUD requirements and guidelines.

2. All processing forms to include those forms and formats listed below, plus and additional forms, formats and analyses used by the lender that are pertinent to the underwriting process.

3. Form HUD-2530 Clearance—Previous Participation Clearance.

4. Copies of appraisals (including formal narrative appraisal, if available) and income and expense analysis:

a. Form HUD-92264, Rental Housing—Project Income Analysis and Appraisal.

b. Form HUD-92264A, Supplement to Project Income Analysis and Appraisal.

c. Form HUD-92274, Operating Expense Analysis Worksheet.

5. Market analysis, reports and information—Form HUD-92273, Estimate of Market Rents by Comparison.

6. Financial statements and analyses—Form HUD-92410, Statement of Profit and Loss and Balance Sheet for Section 223(f) projects.

7. Credit reports and bank and trade references—Form HUD-92417—Personal Financial and Credit Statement.

8. Copies of verification of debt.

9. Engineering and cost studies:
a. Form FHA–2325, Cost Estimate/Feasibility Stage.
b. Form FHA–2326, Project Cost Estimate.
c. Form FHA–2326A, Cost Estimate Worksheet.
10. Analyses of construction and rehabilitation requirements—There is no suggested format. The lender's analyses will depend on issue unique to the proposed project.
11. Plans and specifications—including AIA201 and Form FHA–2554, Supplemental General Conditions.
12. Verification of rent roll (section 223(f) only). A rent roll certified by the mortgagor must disclose the information shown in the Format Rent Roll. The lender may require additional information about occupancy and other rent related issues. At a minimum, however, the information shown on the Format Rent Roll must be submitted by the mortgagor to the lender.
13. Certificate of Need/Alternate Study, if required (section 232 only)—Form HUD–02576HF, Certificate of Need for Nursing Home Assurance of Enforcement of State Standards.
14. Report and recommendation from the Residential Care Coordinator on the proposed project (section 232 only).
15. Analysis of proposed residential care operations and management (section 232 only)—There is no suggested format. The size and content of the analysis will vary, depending on project issues.
16. A narrative summary evaluating the various underwriting aspects of the project, prepared and signed by the Chief Underwriter. There is no suggested format. The size and content of the summary will vary, depending on project issues.

These underwriting documents will be reviewed in order to make sure that lenders are complying with HUD regulations and handbook requirements pertaining to loan processing and underwriting.

3. *Describe any consideration of the use of improved information technology to reduce burden and any technical or legal obstacles to reducing burden.* Because the information collection is for a limited period of time, there is no improved technology that is applicable to burden reduction.

4. *Describe efforts to identify duplication.* There is no duplication among the documents and records requested.

5. *Show specifically why any similar information already available cannot be used or modified for use for the purpose(s) described in 2.* There is no similar information that is already available. Under normal procedures and processing, these documents become available to HUD after the project loan has been endorsed by the HUD Field Office. However, in order for HUD to evaluate and screen the lender's underwriting and effect changes if warranted, it is necessary to require these documents prior to the lender's issuance of a legally binding commitment.

6. *If the collection of information involves small business or other small entities, describe the methods used to minimize burden.* Given the sound capital resources and other requirements of the coinsurance program, we do not define any of the program participants as small businesses.

Describe the consequences of Federal program or policies activities if the data was collected less frequently. If the data was collected less frequently, HUD could not review and assess the quality of the lenders' underwriting before the commitment is issued.

8. *Explain any special circumstances that require the collection to be conducted in a manner inconsistent with the guidelines in 5 CFR 1320.6.* None.

9. *Describe efforts to consul with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed or reported.* HUD staff consults with coinsuring lenders, the Mortgage Bankers Association, and other industry representatives on an on-going basis. There has never been any objection to the documents required for loan processing and undewriting. As noted above, the individual documents required for loan processing and underwriting have previously been cleared by OMB. The detection to require program wide precommitment reviews was not discussed in advance with the Mortgage Bankers Association or with individual coinsuring lenders. Certain coinsuring lenders have challenged HUD's authority to impose this requirement via coinsuring lender letters, rather than through notice and comment rulemaking (Housing Study Group v. Jack F. Kemp, Civil Action No. 90–0244, U.S. District Court for the District of Columbia). Plaintiff's motion for a Temporary Restraining Order was denied on February 6, 1990. A decision on plaintiffs motion for a Preliminary Injunction and defendant's motion to dismiss is expected soon.

10. *Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.* We do not assure confidentiality to respondents. None of the information covered in this request is of a personal nature. While the Department does not assure confidentiality, the Department regards this type of information and documentation as proprietary and confidential, and therefore, exempt from release under the Freedom of Information Act (FOIA).

11. *Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.* No sensitive questions are involved.

12. *Provide estimates of annualized cost to the Federal Government and to respondents. Also provide a description of the method used to estimate cost, which should include qualification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without the paperwork burden.*

a. *Federal Government.* The actual time and cost for processing and completing a pre-commitment review for a particular project will depend upon numerous factors such as the quality of the original submission and the nature and extent of any deficiencies therein. All lenders are now subject to pre-commitment review. Based on current experience, we estimate approximately 28 person hours per case. At a rate of 28 person hours per case, the minimum total person hours per year for four cases per each of the 35 lenders is 3,920 for processing cases from lenders in all three of the coinsurance programs. At a rate of $30 per hour (salaries and overhead), the total cost of the Federal Government for processing 140 cases (a total of 35 lenders in all programs x 4 cases) is $117,600.

b. *Respondents-Lender.* Preparation of a case for a pre-commitment review requires minimal burden hours and minimal cost to the lender because HUD is not requiring copies of all of the documents required to complete underwriting of the loan. Based on current experience we estimate approximately 2 person hours per case, or total of 280 person hours per year. Using these estimates, the cost to each lender (based on $30 per hour) would be $8,400 per year for lenders in all three of the coinsurance programs. In addition to the person hours associated with duplicating and forwarding the required documents to the HUD Offices, it is anticipated that each case will consist of 200 pages and duplication will cost

$.05 per page. Using these estimates, duplications costs per lender is $2,800 (200 pages x .05 x 2 cases [1 for HUD Headquarters and 1 for HUD Field Office] x 4 cases per lender x 35 lenders).

13. *Provide estimates of the burden of the collection of information.* The time and cost for preparing the documents required in this information collection have previously been cleared under OMB Clearance Numbers 2502–0331 and 2502–0375. This clearance request relates only to the additional time needed for assembling and duplicating documents and sending them to HUD. This information collection will require minimal increase in burden hours and cost since this information is already collected and maintained by the lender.

The respondents are HUD-approved coinsuring lenders active in the coinsurance program. There are approximately 35 such lenders in all programs. It is anticipated that participating lenders will submit approximately 4 loans during this period. It should typically take 2 hours maximum time to duplicate and forward the required documents to HUD for review and evaluation. Projecting 4 loans per lender (at 35 lenders) during this period, at 2 hours projected per loan, the total projected annual burden hours will be 280 hours (35 x 4 x 2=280).

14. *Explain reasons for changes in burden, including the need for any increase.* No change in burden, since this is a new clearance request.

15. *For collection of information whose results are planned to be published for statistical use, outline plans for tabulation, statistical analysis, and publication.* The results of this information will not be published.

Collections of Information Employing Statistical Methods

This section is not applicable inasmuch as no information will be collected using such methods.

Firm Commitment Format (Insurance upon Completion)

221(d) Coinsurance Program

To be reproduced by the Lender on its own letterhead

Project Number: _____
City, County, State: _____
Mortgagor: _____

DEAR (Name of Mortgagor)

We, as Lender, have agreed to make a loan to you, as Mortgagor, in an amount not exceeding the sum of Dollars ($) to be secured by a credit instrument and security instrument (hereinafter jointly called the "Mortgage") on the property located at in the County of and in the State of , and consisting of approximately _____ square feet.

That upon the completion of the Project, it is our intention to coinsure with the Department of Housing and Urban Development/Federal Housing Administration (HUD), the said Mortgage under the provisions of Section 221 *(insert (d)(3) or (d)(4))*, pursuant to section 244 of the National Housing Act, and the HUD regulations in 24 CFR part 251 now in effect.

1. The mortgage note shall be payable in monthly installments in accordance with the payment provision checked and completed below:

(a) ☐ *Level Annuity Monthly Payment Plan (Single Interest Rate)*

The loan shall bear interest at the rate of _____ percent (%) per annum payable on the first day of each month on the outstanding balance of principal until maturity and final payment.

(b) ☐ *Level Annuity Monthly Payment Plan (Split Interest Rate)*

The loan shall bear interest at the rate of _____ percent (%) per annum payable on the first day of each month on the outstanding balance of principal up to the date the Mortgagor certifies its costs but not to exceed sixty (60) calendar days following the date established in the Construction Contract for the completion of construction. Thereafter the loan shall bear interest at the rate of _____ percent (%) per annum until the date of final endorsement or the date established for the first payment of interest and principal, whichever occurs first. Finally, the loan shall bear interest at the rate of _____ percent (%) per annum on the outstanding balance until the maturity and final payment date.

(c) ☐ *Other*

2. The first payment to principal (commencement of amortization) shall be due not later than 4 months after the date of construction completion specified in the Construction Contract. The loan shall be payable on a level annuity basis by _____ monthly payments of principal and interest in the amount of $_____. The maturity and final payment date shall be _____ years and _____ months following the due date of the first payment to principal.

3. A project shall have been (constructed) (substantially rehabilitated) on the mortgaged property in accordance with Drawings and Specifications filed with us and designated as _____, HUD project No. _____ dated _____. The Drawings and Specifications, which include "General Conditions of the Contract for Construction" (AIA Document A201) and "Supplementary Conditions of the Contract for Construction" (Form HUD–2554), shall be identified in a manner acceptable to us by the following parties or their authorized agents: Mortgagor, Design Architect, Architect administering the Construction Contract, Contractor and the Contractor's Surety.

4. Prior to endorsement of the Mortgage for insurance, the Mortgagor shall present the following executed documents in a form satisfactory to the Lender.

(a) The Mortgage and the Note evidencing the debt secured.

(b) The Construction Contract (Form HUD–92442) between the Mortgagor and the General Contractor.

(c) Contractor's Certification of Labor Standards and Prevailing Wage Requirements.

(d) Agreement and Certification (Form FHA–3306 or FHA–3306A executed by the Lender and Mortgagor).

(e) Title evidence in conformity with the Regulations which shall show that title to the property on the date of endorsement of the Mortgage for insurance is vested in the Mortgagor free of all encumberances other than the Mortgage, and free of all reservations of title (either junior or prior to said Mortgage), except such as are specifically determined to be acceptable. If such title evidence is in the form of a title insurance policy, it shall by its terms inure to the benefit of the Lender and HUD, as their interest may appear. Such title evidence must be accompanied by an as-built survey of the property, together with the Surveyor's Certification showing that there are no easements or encroachments upon the subject property except those acceptable to the Lender, and that the improvements on the site have been erected upon the land covered by the Mortgage and within the building restriction lines, if any, on said land and do not encroach upon or overhang any land not covered by the Mortgage nor upon any easement or right-of-way and showing the exact location of water, sewer, gas and electric mains and all easements for such utilities then existing. Evidence will be required to show that the premises are not zoned or restricted so as to prevent the completion of the improvements, and that building and other permits have been issued by legally constituted authorities having jurisdiction.

(f) Assurance that adequate sewer, water, gas, and electrical facilities have been fully installed and that necessary public streets, sidewalks, and curbing outside the project site had been fully completed. Satisfactory evidence that the buildings, including electric wiring, plumbing, gas, and other appliances therein have been inspected and approved by all departments, boards, or agencies of the municipality, county or State, or other governmental bureaus or departments having jurisdiction thereof, and by the rating or inspection organization, bureau, association or body performing similar functions and that such certification as may be required with respect to the approval of the said buildings for occupancy and otherwise as may be required by the Lender have been issued to the Mortgagor.

(g) Satisfactory proof that there exists no unpaid obligations contracted in connection with the Mortgage transaction, the purchase of the mortgaged property or the construction or rehabilitation, except such obligations as may be approved by the Lender.

(h) The instrument under which the mortgagor entity is created, unless the Mortgagor is an individual, together with copies of all instruments or agreements necessary under the laws of the applicable jurisdiction to authorize execution of the Mortgage and the other closing documents

and the operation of the project in accordance with all HUD requirements.

(i) A Regulatory Agreement which will permit Lender regulation of the Mortgagor as to methods of operation. Such instrument shall provide, among other things, for the establishment of a Reserve Fund for Replacements by payment of $_____ per annum, to be accumulated monthly under control of the Lender, commencing on the date of the first payment to principal as established in the insured mortgage.

5. Upon completion of the Project the Mortgagor shall furnish satisfactory evidence that the work of the General Contractor is covered by a guarantee acceptable to the Lender, running for a period of at least one year, following endorsement of the Mortgage, against latent defects and faulty workmanship and defective materials in the construction of the building, which guarantee will be secured by (a) a valid surety bond (Form FHA Number 3259) in an amount not less than ten percent (10%) of the cost of construction, running for a period of not less than two years following endorsement of the Mortgage, with the Mortgagor and Lender named as Obligees on the bond with the Lender interest assignable to the Commissioner; or (b) a sum equal to two and one-half percent (2½%) of the face amount of the Mortgage to be held in escrow and subject to the control of the Lender for a period of 18 months following endorsement of the Mortgage, which sum, upon failure of such corrections being made as are required by the Lender or the Commissioner within said one year period, may be used by the Lender or its assigns, for making such required corrections or, with the consent of the Commissioner, may be applied to the last maturing installments of principal of the indebtedness evidenced and secured by the Mortgage.

6. During the course of construction, the Lender and HUD shall at all times have access to the property and the right to inspect the progress of construction, and an inspection fee in the amount of $_____ shall be paid prior to commencement of construction. The inspection of construction by the Lender or a representative of HUD shall be only for the Lender's benefit and protection and that of HUD.

7. Any change in the Drawings and Specifications or in the conditions upon which commitment is based, which may occur after the date hereof, shall be explained in writing, or in a supplementary application if required by the Lender, and must be approved by the Lender prior to endorsement. All changes in the Drawings and Specifications may be effected only with the Lender's prior written approval. The Lender's approval of any change described above may be subject to such conditions and qualifications as it may prescribe.

8. If under the laws of the jurisdiction in which the project is located, the personal property of the Mortgagor, which is used in the operation of the project, is not covered by and subject to the real estate mortgage, the Lender shall require and receive from the Mortgagor prior to the endorsement of the Mortgage Note, a Security Agreement and a Financing Statement or such other security instrument as may be necessary to effect a first lien on such personal property in favor of the Lender.

9. Any change in the sponsorship upon which the commitment is predicated must be requested in writing to the Lender, and such request must be approved in writing. Any sponsor or principal (including the principals of any parent entity of such sponsor or principal), who is now or who may later become involved in this project by way of financial interest, employment or otherwise, and who has not filed a certificate with HUD fully disclosing his previous Lender participation in HUD mortgage insurance programs, shall file such certificate on the form prescribed by HUD.

10. All certificates, documents and agreements called for by this commitment shall be on forms approved or prescribed by HUD and shall be completed, executed and filed in the number of copies and in such manner as the Lender shall prescribe.

11. Upon endorsement of the Mortgage for insurance, the Mortgagor shall pay in advance a mortgage insurance premium equal to one-half percentum of the principal amount of the insured Mortgage to cover the first mortgage insurance premium and shall continue to make payments thereafter as required by the aforesaid Regulations.

12. Prior to endorsement of the Mortgage for insurance, the Mortgagor and the Lender shall certify under oath that in selecting tenants for the property covered by the Mortgage, the Mortgagor will not discrimiante against any family by reason of the fact that there are children in the family (unless the project is designed specifically for occupancy by the elderly and handicapped), and that the Mortgagor will not sell the property while mortgage insurance is in effect unless the purchaser also so certifies and files such certification with HUD. The Mortgagor must also comply with the provisions of Title VIII of the Civil Rights Act of 1968, Executive Order 11063, Executive Order 11246, and all regulations issued pursuant to these laws.

13. Upon endorsement of the Mortgage for insurance, it must be current with respect to all payments required to be made by its terms, including all deposits required to be made with the Lender for mortgage insurance premiums, fire, and other property insurance premiums, ground rents, water rates, taxes and other assessments; and there shall be in full force and effect fire and other property insurance as required by the insured Mortgage.

4. Construction shall commence upon the Project within 60 days from the date of this commitment and must be continued thereafter diligently to completion. If construction is not started within such time this commitment shall terminate unless the time for commencement of construction is extended in writing by the Lender.

15. Prior to endorsement of the Mortgage for insurance, the Mortgagor must certify under oath that so long as HUD has any interest in the Mortgage transaction no part of any building will be rented for a period of less than 30 days or operated in such a manner as to offer any hotel services to any tenant in the building or buildings; and that the property will not be sold so long as HUD retains any interest therein, unless the purchaser files with HUD a like certification executed by such purchaser under oath.

16. If an operating deficit is required, upon endorsement of the Mortgage for insurance, the Mortgagor(s) shall execute Form FHA-2476a, Escrow Agreement—Additional Contribution by Sponsors, showing a deposit of $_____ in the form of cash, an unconditional irrevocable letter of credit issued to the depository by a banking institution, or United States bearer bonds.

17. The Mortgagor shall not be required to pay to the Lender an initial service charge in excess of two percent (2%) of the original amount of the Mortgage.

18. This commitment shall expire on _____, 19__, unless duly extended in writing by the Lender and upon such expiration all rights and obligations of the respective parties shall cease.

19. Prior to the execution of any Construction Contract relative to the subject Project, the Agreement and Certification shall be executed by the Mortgagor and the Lender and the Mortgagor shall be bound thereby with respect to any subsequent subject to appropriate reduction in accordance with the terms of the Agreement and Certification.

20. Special conditions set forth below or attached hereto and identified as additional numbered paragraphs are made a part hereof.

21. If construction does not begin as required within 60 days of the date of this commitment, or such extension period as may be granted by the Lender in writing, a request for the reopening may be made within 90 days of the termination. Such request must be accompanied by a reopening fee in the amount of $_____.

This commitment and exhibits referred to herein together with the applicable HUD Regulations constitute the entire agreement between the Lender, and acceptance of the terms hereof is evidenced by the signature and seal of the Mortgagor and Lender upon the lines provided therefor below.

The above commitment to insure is hereby acknowledged by the undersigned, and we hereby agree to be bound by the terms thereof.

Attest

_____

_____

By

_____

Attest

_____

_____

By

Firm Commitment (Insurance of Advances)

221(d) Coinsurance Program

To be reproduced by the Lender on its own letterhead

Project Number: _____
City, County, State: _____
Name of Mortgagor: _____

DEAR (Name of Mortgagor)

We, as Lender, have agreed to make a loan to you, as Mortgagor, in an amount not exceeding the sum of Dollars ($) to be secured by a credit instrument and security instrument (hereinafter jointly called the "Mortgage") on the property

located at in the County of and in the State of , and consisting of approximately _____ square feet.

It is our intention to coinsure with the Department of Housing and Urban Development/Federal Housing Administration (HUD), the said Mortgage under the provisions of Section 221 (*insert (d)(3) or (d)(4)),* pursuant to Section 244 of the National Housing Act, and the HUD regulations in 24 CFR Part 251 now in effect.

1. The mortgage note shall be payable in monthly installments in accordance with the payment provision checked and completed below:

(a) ☐ *Level Annuity Monthly Payment Plan (Single Interest Rate)*

The loan shall bear interest at the rate of _____ percent (%) per annum payable on the first day of each month on the outstanding balance of principal until maturity and final payment.

(b) ☐ *Level Annuity Monthly Payment Plan (Split Interest Rate)*

The loan shall bear interest at the rate of _____ percent (%) per annum payable on the first day of each month on the outstanding balance of principal up to the date the Mortgagor certifies its costs but not to exceed sixty (60) calendar days following the date established in the Construction Contract for the completion of construction. Thereafter the loan shall bear interest at the rate of _____ percent (%) per annum until the date of final endorsement or the date established for the first payment of interest and principal, whichever occurs first. Finally, the loan shall bear interest at the rate of _____ percent (%) per annum on the outstanding balance until the maturity and final payment date.

(c) ☐ *Other*

2. The first payment to principal (commencement of amortization) shall be due not later than 4 months after the date of construction completion specified in the Construction Contract. The loan shall be payable on a level annuity basis by _____ monthly payments of principal and interest in the amount of $ _____. The maturity and final payment date shall be _____ years and _____ months following the due date of the first payment to principal.

3. A project shall be (constructed) (substantially rehabilitated) on the mortgaged property in accordance with Drawings and Specifications filed with us and designated as _____, HUD Project No. _____ dated _____. The Drawings and Specifications, which include "General Conditions of the Contract for Construction" (AIA Document A201) and "Supplementary Conditions of the Contract for Construction" (Form HUD–2554), shall be identified in a manner acceptable to us by the following parties or their authorized agents: Mortgagor, Design Architect, Architect administering the Construction Contract, Contractor and the Contractor's Surety.

4. Prior to endorsement of the Mortgage for insurance, the Mortgagor shall present the following executed documents in a form satisfactory to the Lender.

(a) The Mortgage and the Note evidencing the debt secured.

(b) The Building Loan Agreement (Form HUD–92441) governing advances of the mortgage proceeds.

(c) The Construction Contract (Form HUD–92442) between the Mortgagor and the General Contractor whereby the project is to be built.

(d) Contractor's Certification of Labor Standards and Prevailing Wage Requirements.

(e) Agreement and Certification (Form FHA–3306 or FHA–3306A executed by the Lender and Mortgagor).

(f) Owner-Architect Agreement.

(g) Title evidence in conformity with the Regulations which shall show that title to the property on the date of initial endorsement of the Mortgage for insurance is vested in the Mortgagor free of all encumbrances other than the Mortgage, and free of all reservations of title (either junior or prior to said Mortgage), except such as are specifically determined to be acceptable. If such title evidence is in the form of a title insurance policy, it shall by its terms inure to the benefit of the Lender and HUD, as their interest may appear. Such title evidence must be accompanied by an survey of the property, together with the Surveyor's Certification showing that there are no easements or encroachments upon the subject property except those acceptable to the Lender, which survey will be extended from time to time during construction to show that the improvements on the site have been erected solely upon the land covered by the mortgage and within the building restriction lines, if any, on said land and do not encroach upon or overhang any land not covered by the Mortgage nor upon any easement or right-of-way. Evidence will be required to show that the premises are not zoned or restricted so as to prevent the construction of the improvements, and that building and other permits have been issued by legally constituted authorities having jurisdiction.

(h) Assurance of the completion of the project.

(i) Assurance that adequate sewer, water, gas, and electrical facilities will be fully installed prior to completion of the project and that necessary public streets, sidewalks, and curbing outside the project site, if not yet constructed, will be fully completed within a reasonable time after completion of the project.

(j) Satisfactory proof that there exist no unpaid obligations contracted in connection with the Mortgage transaction, the purchase of the unmortgaged property or the construction or rehabilitation, except such obligations as may be approved by the Lender.

(k) The Mortgagor's Certificate certifying to the priority of the Mortgage and to other matters set forth therein.

(l) The instrument which under the mortgagor entity is created, unless the Mortgagor is an individual, together with copies of all instruments or agreements necessary under the laws of the applicable jurisdiction to authorize execution of the Mortgage and the other closing documents and the operation of the project in accordance with all HUD requirements.

(m) A Regulatory Agreement which will permit Lender regulation of the Mortgagor as to methods of operation. Such instrument shall provide, among other things, for the establishment of a Reserve Fund for Replacements by payment of $ _____ per annum, to be accumulated monthly under control of the Lender, commencing on the date of the first payment to principal as established in the insured Mortgage.

5. The Mortgagor must deposit the sum of $ _____ for completion of the project. This sum represents the difference between the Lender's estimate of the total cash required for carrying charges, financing, and for construction of the project, including builder's fees (or builders and sponsors profit and risk allowance, if any), architects fees, and the maximum amount of the Mortgage to be insured. These funds may be reduced by so much of the profit and risk allowance and fees, up to a maximum of $ _____, as the closing documents show are not to be paid in cash.

6.(a) Approval of advances in accordance with the Building Loan Agreement must be obtained on a form prescribed by HUD prior to the date of each advance to be insured. A Contractor's Prevailing Wage Certificate will be filed with the request for approval of each advance which includes a payment for construction costs.

(b) During the course of construction, the Lender and HUD shall at all times have access to the property and the right to inspect the progress of construction, and an inspection fee in the amount of $ _____ shall be paid upon the initial insurance endorsement of the Mortgage Note. The inspection of construction by the Lender or a representative of HUD shall be only for the Lender's benefit and protection and that of HUD.

(c) Upon completion of the project in accordance with the Drawings and Specifications, the mortgage note will be finally endorsed for insurance to the extent of the advances of mortgage proceeds approved by us, subject to reduction as provided in the Regulations.

7. Any change in the Drawings and Specifications or in the conditions upon which commitment is based, which may occur after the date hereof, shall be explained in writing, or in a supplementary application if required by the Lender, and must be approved by the Lender prior to initial endorsement. Any such change occuring subsequent to initial endorsement must be brought to the Lender's attention immediately upon occurrence, and except for such changes in the Drawings and Specifications which may be authorized by the Architect, must be approved by the Lender prior to the date on which the Lender is requested to approve any further advance for insurance. All changes in the Drawings and Specifications may be effected only with the Lender's prior written approval. The Lender's approval of any change described above may be subject to such conditions and qualifications as it may prescribe.

8. If under the laws of the jurisdiction in which the project is located, the personal property of the Mortgagor, which is used in the operation of the project, is not covered by and subject to the real estate mortgage, the

Lender shall require and receive from the Mortgagor prior to the final insurance endorsement of the Mortgage Note, a Security Agreement and a Financing Statement or such other security instrument as may be necessary to effect a first lien on such personal property in favor of the Lender.

9. Any change in the sponsorship upon which the commitment is predicated must be requested in writing to the Lender, and such request must be approved in writing. Any sponsor or principal (including the principals of any parent entity of such sponsor or principal), who is now or who may later become involved in this project by way of financial interest, employment or otherwise, and who has not filed a certificate with HUD fully disclosing his previous Lender participation in HUD mortgage insurance programs, shall file such certificate on the form prescribed by HUD.

10. All certificates, documents and agreements called for by this commitment shall be on forms approved or prescribed by HUD and shall be completed, executed and filed in the number of copies and in such manner as the Lender shall prescribe.

11. Upon endorsement of the Mortgage for insurance, the Mortgagor shall pay in advance a mortgage insurance premium equal to one percentum of the principal amount of the insured Mortgage to cover the first mortgage insurance premium and shall continue to make payments thereafter as required by the aforesaid Regulations.

12. Prior to endorsement of the Mortgage for insurance, the Mortgagor and the Lender certify under oath that in selecting tenants for the property covered by the Mortgage, the Mortgagor will not discriminate against any family by reason of the fact that there are childen in the family (unless the project is designed specifically for occupancy by the elderly and handicapped), and that the Mortgagor will not sell the property while mortgage insurance is in effect unless the purchaser also so certifies and files such certification with HUD. The Mortgagor must also comply with the provisions of Title VIII of the Civil Rights Act of 1968, Executive Order 11063, Executive Order 11246, and all regulations issued pursuant to these laws.

13. Prior to endorsement of the Mortgage for insurance, the Mortgagor must certify under oath that so long as HUD has any interest in the Mortgage transaction no part of any building will be rented for a period of less than 30 days or operated in such a manner as to offer any hotel services to any tenant in the building or buildings; and that the property will not be sold so long as HUD retains any interest therein, unless the purchaser files with HUD a like certification executed by such purchaser under oath.

14. If an operating deficit is required, upon endorsement of the Mortgage for insurance, the Mortgagor(s) shall execute Form FHA-2476a, Escrow Agreement—Additional Contribution by Sponsors, showing a deposit of $_____ in the form of cash, an unconditional irrevocable letter of credit issued to the depository by a banking institution, or United States bearer bonds.

15. The Mortgagor shall not be required to pay to the Lender an initial service charge in excess of two percent (2%) of the original amount of the Mortgage.

16. This commitment shall expire on _____, 19____, unless duly extended in writing by the Lender and upon expiration all rights and obligations of the respective parties shall cease.

17. Prior to the execution of any Construction Contract relative to the subject Project, the Agreement and Certification shall be executed by the Mortgagor and the Lender and the Mortgagor shall be bound thereby with respect to any subsequent subject to appropriate reduction in accordance with the terms of the Agreement and Certification.

18. The Design Architect and the Architect administering the construction contract shall each be covered by a policy of professional liability insurance in an amount consistent with insurance industry practice. At initial closing, there shall be provided for each Architect the writing agent's certificate in substantially the following form:

To: Mortgage and Secretary of Housing and Urban Development

I certify that (Name of Architect) is insured in the amount of $_____ under (Name of Insurer) Policy No. _____ of Architect and/or Engineers Professional Liability Insurance.

19. Special conditions set forth below or attached hereto and identified as additional numbered paragraphs are made a part hereof.

20. A request for the reopening of this commitment within 90 days of its termination by the Lender must be accompanied by a reopening fee in the amount of $_____.

This commitment and exhibits referred to herein together with the applicable HUD Regulations constitute the entire agreement between the Lender, and acceptance of the terms hereof is evidenced by the signature and seal of the Mortgagor and Lender upon the lines provided therefor below.

The above commitment to insure is hereby acknowledged by the undersigned, and we hereby agree to be bound by the terms thereof.

Attest

_____

_____

Mortgagor

_____

By

_____

Lender

Attest

_____

_____

By

Firm Commitment Format

To be Reproduced by the lender on its own Letterhead

Project Number: _____

_____

(Name of Sponsor(s))

_____

(City, County, State)

_____

(Name of Proposed Mortgagor)

DEAR SIRS:

We, as lender, have agreed to make a loan to (hereinafter called the "Mortgagor"), in an amount not exceeding the sum of Dollars ($) to be secured by a credit instrument and security instrument (hereinafter jointly called the "Mortgage") covering real property with existing building(s) thereon, (hereinafter called the "Project"), situated in the of and State of at as shown on the As-built Survey, Surveyor's Certificate, and legal description of the property attached hereto and marked "Exhibit A."

It is our intention to coinsure with the Department of Housing and Urban Development/Federal Housing Administration, the said mortgage under the provisions of Section 207, pursuant to Section 223(f) and pursuant to Section 244 of the National Housing Act, and the Regulations thereunder now in effect.

1. Upon endorsement of the Mortgage for insurance, repairs, if any, shall have been completed in accordance with the Work Write-up attached hereto as "Exhibit B" and the Specifications (and Drawings, if required) attached hereto as "Exhibit C" except as they may have been modified by changes formally approved in writing by the undersigned before the changes are made.

2. During the course of repairs, if any, we, the Federal Housing Commissioner and his/her representatives shall at all times have access to the property and the right to inspect the progress of the repairs. The inspection of the repairs by representatives of the Commissioner shall be for the benefit and protection of the Secretary of Housing and Urban Development. If deviations from the Work Write-up and Specifications (and Drawings, if applicable) or unsatisfactory workmanship or defective materials are not corrected to our satisfaction prior to the completion of repairs the Mortgage will not be considered eligible for insurance and this commitment will be null and void.

3. Prior to endorsement of the Mortgage for insurance, the Mortgagor shall present a title policy or title evidence in conformity with the Regulations above mentioned which shall show that title to the property on the date of endorsement of the mortgage for insurance is vested in the Mortgagor free of all encumbrances other than said Mortgage and all exceptions to title (either junior or prior to said Mortgage) except such as are specifically determined to be acceptable. The Morgagor shall also furnish satisfactory proof that there exist no unpaid obligations contracted in connection with the Mortgage transaction, the purchase of the mortgaged property or refinancing of existing indebtedness, or the completion of the repairs, except such obligations as may be approved by the lender. If such title evidence is in the form of a title insurance policy, it shall by its terms inure to the benefit of the lender and/or the Secretary of Housing and Urban Development, as their interests may appear. If under the laws of the jurisdiction in which the Project is located the chattels and personal property of the Mortgagor required in the operation of the Project are not covered by and subject to the terms of the Mortgage, the lender must require and receive from the Mortgagor a chattel mortgage or such other security instrument as may be necessary covering such personal property and chattels.

4. The Mortgage shall bear interest at the rate of _____ percent per annum payable on the first day of each month on the outstanding balance of principal. The first payment to principal (Commencement of amortization) shall be due not later than the first day of the second month following the date of endorsement of the Mortgage for insurance. The Mortgage shall be payable on a level annuity basis by _____ monthly payments of principal and interest in the amount of _____. The maturity and final payment date shall be _____ years and _____ months following the due date of the first payment to principal.

5. The credit instrument and the security instrument to be insured shall be in the form prescribed by the Commissioner for use in connection with Section 207 loans in the locality in which the property is situated.

6. The Mortgagor must possess the powers necessary for operating the Project and meeting all the requirements of the Commissioner for insurance of the Mortgage. Prior to endorsement of the Mortgage for insurance, there shall be filed with the lender a copy of the instrument under which the Mortgagor entity is created (unless the Mortgagor is an individual) together with copies of all instruments or agreements necessary under the laws of the applicable jurisdiction to authorize execution of the Mortgage and the other closing documents, and a Regulatory Agreement or other instrument as will permit the lender's regulation of the Mortgagor as to rents, charges and methods of operation. Such instrument shall provide, among other things, for the establishment of a Reserve Fund for Replacements by payment of $_____ per annum to be accumulated monthly under the control of the lender, commencing on the date of the first payment to principal as established in the insured Mortgage unless a later date is agreed to by the lender. In addition to the per annum amount required to be accumulated monthly under control of the lender for the Reserve Fund for Replacements, there shall be an initial deposit in the amount of $_____ made to the Reserve Fund for Replacements by the Mortgagor prior to endorsement of the Mortgage for insurance.

7. If any repairs are to be made to an existing Project which require additional sewer, water, gas or electrical facilities, evidence satisfactory to the lender shall be submitted prior to endorsement of the Mortgage for insurance showing that adequate sewer, water, gas, and electrical facilities have been fully installed and that necessary public streets, sidewalks and curbing outside the Project site have been completed. All off-site facilities or utilities required by the special conditions under this commitment shall be included in such evidence.

8. Prior to the endorsement of the Mortgage for insurance, evidence shall be submitted to the lender that the buildings, including electric wiring, plumbing, gas, and other appliances therein have been inspected and approved by all departments, boards, or agencies of the municipality, county or State, or other governmental bureaus or departments having jurisdiction thereof, and by the rating or inspection organization, bureau, association or body performing similar functions and that such certification as may be required with respect to the approval of the said buildings for occupancy and otherwise as may be required by the Commissioner have been issued to the Mortgagor.

9. Prior to the endorsement of the Mortgage for insurance, the lender shall be furnished with a current As-built survey duly certified to by a registered surveyor satisfactory to the lender and an up-dated Surveyor's Certificate showing that there are no easements or encroachments upon the subject property except those approved by the Commissioner and that the improvements of the Project are contained upon the land covered by the lender and within the building restriction lines, if any, on said land and do not encroach upon or overhang any land not covered by the Mortgage or beyond the said building restriction lines, if any, nor any easement or right-of-way. The survey shall also show the exact location of water, sewer, gas, electric mains, and all easements for such utilities then existing.

10. Upon endorsement of the Mortgage for insurance, the Mortgage must be current with respect to all payments required to be made by its terms, including all deposits required to be made with the lender for mortgage insurance premiums, fire, and other property insurance premiums, ground rents, water rates, taxes and other assessments; and there shall be in full force and effect fire and other property insurance as required by the insured Mortgage.

11. Upon endorsement of the Mortgage for insurance, the Mortgagor shall pay in advance a mortgage insurance premium equal to one percentum of the principal amount of the insured Mortgage to cover the first mortgage insurance premium and shall continue to make payments thereafter as required by the aforesaid Regulations.

12. Prior to endorsement of the Mortgage for insurance, the Mortgagor must certify under oath that in selecting tenants for the property covered by the Mortgage, the Mortgagor will not discriminate against any family by reason of the fact that there are children in the family, and that the Mortgagor will not sell the property while mortgage insurance is in effect unless the purchaser also so certifies and files such certification with the Commissioner. The mortgagor must also comply with the provisions of Title VIII of the Civil Rights Act of 1968, Executive Order 11063, Executive Order 11246, and all regulations issued pursuant to these laws.

13. Prior to endorsement of the Mortgage for insurance, the Mortgagor must certify under oath that so long as the Commissioner has any interest in the Mortgage transaction no part of any building will be rented for a period of less than 30 days or operated in such a manner as to offer any hotel services to any tenant in the building or buildings; and that the property will not be sold so long as the Commissioner retains any interest therein, unless the purchaser files with the Commissioner a like certification executed by such purchaser under oath.

14. If an operating deficit is required, upon endorsement of the Mortgage for insurance, the Mortgagor(s) shall execute Form FHA-2476a, Escrow Agreement—Additional Contribution by Sponsors, showing a deposit of $_____ in the form of cash, an unconditional irrevocable letter of credit issued to the depository by a banking institution, or United States bearer bonds. In the event a demand under the letter of credit is not promptly met, the lender shall immediately provide the cash equivalent to the undrawn balance thereunder.

15. The Mortgagor shall not be required to pay to the lender an initial service charge in excess of two percent (2%) of the original amount of the Mortgage.

16. This commitment shall expire 19 , unless duly extended in writing by the lender and upon such expiration all rights and obligations of the respective parties shall cease.

17. Prior to the execution of any repair contracts relative to the subject Project, the Agreement and Certification Form Number _____ shall be executed by the Mortgagor and the lender and the Mortgagor shall be bound thereby with respect to any subsequent contracts or subcontracts. The commitment amount herein above is subject to appropriate reduction in accordance with the terms of the Agreement and Certification.

18. It is a condition of this commitment that any change in sponsorship upon which this commitment was predicated must be indicated in writing on behalf of the proposed substitute sponsor(s) and such request must be approved in writing by the lender.

19. In the event that additional code requirements are imposed by any state or local authority, after issuance of this commitment, that would cause the total cost of all required repairs to exceed fifteen percent (15%) of the total estimate of value after repairs, or the $6,500 per unit repair limitation, this commitment shall be null and void.

20. Special Conditions:

BILLING CODE 4210-27-M

OMB Approval No. 2502-0118 (Exp. 5-31-92)

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
HOUSING - FEDERAL HOUSING COMMISSIONER AND
U.S. DEPARTMENT OF AGRICULTURE
FARMERS HOME ADMINISTRATION

PREVIOUS PARTICIPATION CERTIFICATION

PART I - CERTIFICATE *(To be completed by Principals of Multifamily Projects.)*

1. TO: *(Name and City of HUD Area Office or USDA FmHA District Office where the Application is Filed.)*	2. PROJECT NAME, I.D., OR PROJECT NUMBER AND CITY, STATE CONTAINED IN THE APPLICATION ALSO: SECTION 8 CONTRACT NUMBER
3. LOAN OR CONTRACT AMOUNT $	4. NUMBER OF UNITS OR BEDS
5. SECTION OF ACT *(If known)*	6. TYPE OF PROJECT *(Check One)* ☐ Existing ☐ Rehabilitation ☐ Proposed *(New)*

LIST OF ALL PROPOSED PRINCIPAL PARTICIPANTS

7. Alphabetical List of the Full Names *(last name first)* and Address of all known principals and affiliates *(people, businesses and organizations)* proposing to participate in the project described above.	8. Role of Each Principal	9. Expected % Interest in Ownership	10. Social Security or IRS Employer Number

CERTIFICATION

I *(meaning the individual who signs as well as the corporations, partnerships or other parties listed above who certify)* hereby apply to HUD or USDA - FmHA, as the case may be, for approval to participate as a principal in the role and project listed above based upon my following previous participation record and this Certificate.

I certify that all the statements made by me are true, complete and correct to the best of my knowledge and belief and are made in good faith, including the data contained in Schedule A and Exhibits signed by me and attached to this form.

A. I further certify that:

1. Schedule A contains a listing of every assisted or insured project of HUD, USDA-FmHA and State and Local Government housing finance agencies in which I have been or am now a principal.
2. For the period beginning 10 years prior to the date of this certification, and except as shown by me on the certificate,
   a. No mortgage on a project listed by me has ever been in default, assigned to the Government or foreclosed, nor has mortgage relief by the mortgagee been given;
   b. I have not experienced defaults or noncompliances under any Conventional Contract or Turnkey Contract of Sale in connection with a public housing project;
   c. To the best of my knowledge, there are no unresolved findings raised as a result of HUD audits, management reviews or other Governmental investigations concerning me or my projects;
   d. There has not been a suspension or termination of payments under any HUD assistance contract in which I have had a legal or beneficial interest attributable to my fault or negligence;
   e. I have not been convicted of a felony and am not presently, to my knowledge, the subject of a complaint or indictment charging a felony. *(A felony is defined as any offense punishable by imprisonment for a term exceeding one year, but does not include any offense classified as a misdemeanor under the laws of a State and punishable by imprisonment of two years or less);*
   f. I have not been suspended, debarred or otherwise restricted by any Department or Agency of the Federal Government or of a State Government from doing business with such Department or Agency.
   g. I have not defaulted on an obligation covered by a surety or performance bond and have not been the subject of a claim under an employee fidelity bond.
3. All the names of the parties, known to me to be principals in this project(s) in which I propose to participate, are listed above.
4. I am not a HUD/FmHA employee or a member of a HUD/FmHA employee's immediate household as defined in HUD's Standard of Conduct in 24 CFR 0.735.205(e)(2)/USDA's Standard of Conduct in 7 CFR Part 0 Subpart B.
5. I am not a principal participant in an assisted or insured project this date on which construction has stopped for a period in excess of 20 days or which has been substantially completed for more than 90 days and documents for closing, including final cost certification have not been filed with HUD or FmHA.
6. To my knowledge I have not been found by HUD or FmHA to be in noncompliance with any applicable civil rights laws.

B. *(APPLICABLE TO GENERAL PARTNERS OR PROJECT OWNERS ONLY)*
All the parties who are principals or who are proposed as principals here are listed above and no principals or identities of interest are concealed or omitted.

C. I am not a Member of Congress or a Resident Commissioner nor otherwise prohibited or limited by law from contracting with the Government of the United States of America.

D. Statements above *(if any)* to which I cannot certify have been deleted by striking through the words with a pen. I have initialed each deletion *(if any)* and have attached a true and accurate signed statement *(if applicable)* to explain the facts and circumstances which I think helps to qualify me as a responsible principal for participation in this project.

Typed or Printed Name of Principal	Signature of Principal	Title, Role or Capacity	Date	Area Code and Telephone No.

WARNING: It is a crime to knowingly make false statements to the United States on this or any other similar form. Penalties upon conviction can include a fine and imprisonment. For details see: Title 18 U.S. Code, Section 1001 and Section 1010.

THIS FORM WAS PREPARED BY *(Please print name)*

AREA CODE & TELEPHONE NO.

REPORT OF INSPECTOR GENERAL - INTERNAL PROCESSING ONLY

THE INDICES OF THE INSPECTOR GENERAL'S OFFICE HAVE BEEN CHECKED FOR THE NAMES OF THE PRINCIPALS LISTED IN PART I ABOVE AND: ☐ a. WE HAVE NO INFORMATION; OR ☐ b. WE HAVE INFORMATION AND A REPORT IS ATTACHED

DATE	TITLE	SIGNATURE

Previous Editions Obsolete

HUD-2530 (3-87)
HB 4571.1 Rev.

SCHEDULE A - LIST OF PREVIOUS PROJECTS AND SECTION 8 CONTRACTS

By my name below is the complete list of my **previous** projects and my participation history as a principal in Multifamily Housing programs of HUD/USDA-FmHA, State and Local Housing Finance Agencies.

NOTE: Read and follow the attached instructions sheet carefully, Abbreviate where possible. Make full disclosure. Add extra sheets if you need more space. Double check for accuracy. If you have no previous projects write by your name - "No previous participation - First Experience.

1. List each Principal's Name *(List in Alphabetical Order, Last Name First)*	2. List Previous Projects *(Give the I.D. Number, Project Name, City of Location, Government Agency involved and Number of Units in the Project)*	3. List Principal's Participation Role and Interest - Give Month and Year Participation began and ended.	4. Disclose Defaults, Mortgage Relief, Assignments, Foreclosures. If None, write "None."	5. RESERVED FOR HUD PROCESSING

PART II - INTERNAL PROCESSING ONLY

1 Received by the Field Office, checked by me for accuracy and completeness and found ready for processing:

DATE | FTS TELEPHONE NUMBER

SUPERVISOR, PROCESSING CONTROL AND REPORTS UNIT

2 TO: Department of Housing and Urban Development, Multifamily Participation Review Committee, Washington, D.C.
A review of the records and project files of this office relative to the above listed parties and projects reveals:

☐ A. No adverse information, Form HUD-2530 approval is recommended; ☐ B. Problems exist, my memorandum on them is attached.

DIRECTOR OF HOUSING

PROCESSING IS AUTHORIZED

DATE | NAME OF AREA MANAGER

OMB No. 2502-0331
Expires 6-30-91

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
HOUSING - FEDERAL HOUSING COMMISSIONER

RENTAL HOUSING
PROJECT INCOME ANALYSIS AND APPRAISAL

☐ SAMA
☐ Feasibility (Rehab)
☐ Conditional
☐ Firm

Project Name	Project No.

A. LOCATION AND DESCRIPTION OF PROPERTY:

1. Street Nos.	2. Street	3. Municipality	4a. Census Tract No.	4b. Placement Code	5. County

6. State and Zip Code	7. Type of Project: ☐ Elevator ☐ Walkup ☐ Row (T.H.) ☐ Detached ☐ Semi-Detached	8. No. Stories	9. Foundation: ☐ Slab on Grade ☐ Full Bsmt. ☐ Partial Bsmt. ☐ Crawl Space

9.a Basement Floor: ☐ Structural Slab ☐ Slab on Grade	10. ☐ Proposed ☐ Existing	11. Number of Units: Revenue	Non-Rev.	12. No. of Bldgs.	13. List Accessory Bldgs. and Area	13a. List Recreation Facilities and Area

SITE INFORMATION			BUILDING INFORMATION			
14. Dimensions: ft. by ft. or sq. ft.			16. Yr. Built	16.a ☐ Manufactured Housing ☐ Modules ☐ Conventionally Built ☐ Components		
15. Zoning: *(If recently changed, submit evidence)*	17. Structural System	17.a Floor System	17.b Exterior Finish	18. Heating - A/C System		

B. INFORMATION CONCERNING LAND OR PROPERTY:

19. Date Acquired	20. Purchase Price	21. Additional Costs Paid or Accrued	22. If Leased, Hold. Annual Ground Rent	23.a Total Cost	23.b Outstanding Balance	24. Relationship - Business, Personal or Other Between Seller and Buyer
	$	$	$	$	$	

25. Utilities - Public / Community / Distance From Site

Water: ☐ ☐ _____
Sewers: ☐ ☐ _____

26. Unusual Site Features -
☐ Cuts ☐ Fills ☐ Rock Formations ☐ Erosion ☐ None
☐ Poor Drainage ☐ High Water Table ☐ Retaining Walls
☐ Other *(Specify)* _____ ☐ Off Site Improvements

C. ESTIMATE OF INCOME:

27. No. of Each Family Type Unit	Rentable Living Area (Sq. Ft.)	Composition of Units	Unit Rent Per Month	Total Monthly Rent For Unit Type
			$	$

28. TOTAL ESTIMATED RENTALS FOR ALL FAMILY UNITS $

29. No. Parking Spaces - ☐ Attended ☐ Self Park

Open Spaces _____ @ $ _____ per month
Covered Spaces _____ @ $ _____ per month

30. Commercial*
Area-Ground Level _____ Sq. Ft. @ $ _____ per sq. ft./mo.
Other Levels _____ Sq. Ft. @ $ _____ per sq. ft./mo.

*Attach Documentation

31. TOTAL ESTIMATED GROSS PROJECT INCOME AT 100% OCCUPANCY $

32. TOTAL ANNUAL RENT *(Item 31 x 12 months)* $

33. Gross Floor Area - Sq. Ft.	34. Net Rentable Residential Area - Sq. Ft.	35. Net Rentable Commercial Area - Sq. Ft.

36. NON-REVENUE PRODUCING SPACE

Type of Employee	No. Rms.	Composition of Unit	Location of Unit in Project

D. EQUIPMENT AND SERVICES INCLUDED IN RENT: *(Check Appropriate Items)*

37. EQUIPMENT -
☐ Ranges *(Gas or Elec.)* ☐ Disposal
☐ Refrig. *(Gas or Elec.)* ☐ Dishwasher
☐ Air Cond. *(Equip. Only)* ☐ Carpet
☐ Kitchen Exhaust Fan ☐ Drapes
☐ Laundry Facilities ☐ Swimming Pool
☐ Other _____ ☐ Tennis Court

38. SERVICES -
GAS: ☐ Heat ☐ Hot Water ☐ Cooking ☐ Air Conditioning
ELEC: ☐ Heat ☐ Hot Water ☐ Cooking ☐ Air Conditioning ☐ Lights, etc. in Unit
OTHER FUEL: ☐ Heat ☐ Hot Water
☐ WATER ☐ OTHER _____

39. SPECIAL ASSESSMENTS:
a. ☐ Prepayable ☐ Non-Prepayable
b. Principal Balance $ _____
c. Annual Payment $ _____
d. Remaining Term _____ Years

Replaces Form FHA-2264, which May be Used until Supply is Exhausted

HUD-92264 (9-80)

E. ESTIMATE OF ANNUAL EXPENSE:

ADMINISTRATIVE–

1. Advertising - - - - - - - - - - - - $ _____
2. Management - - - - - - - - - - - - _____
3. Other - - - - - - - - - - - - - - - - _____
4. TOTAL ADMINISTRATIVE - - $ _____

OPERATING–

5. Elevator Maint. Exp. - - - - - - $ _____
6. Fuel (Heating and Domestic Hot Water) _____
7. Lighting & Misc. Power - - - - _____
8. Water - - - - - - - - - - - - - - - _____
9. Gas - - - - - - - - - - - - - - - - _____
10. Garb. & Trash Removal - - - - _____
11. Payroll - - - - - - - - - - - - - - _____
12. Other - - - - - - - - - - - - - - - _____
13. TOTAL OPERATING - - - - - - $ _____

MAINTENANCE–

14. Decorating - - - - - - - - - - - - $ _____
15. Repairs - - - - - - - - - - - - - - _____
16. Exterminating - - - - - - - - - - _____
17. Insurance - - - - - - - - - - - - - _____
18. Ground Expense - - - - - - - - - _____
19. Other - - - - - - - - - - - - - - - _____
20. TOTAL MAINTENANCE - - - - - - $ _____
21. Replacement Reserve (.0060 x total structures Line 41) - - - - - - - - - - - - - - - - $ _____
22. TOTAL OFERATING EXPENSE - - - - $ _____

TAXES–

23. Real Estate: Est. Assessed Value $ @ $ per $1000 - - - $ _____
24. Personal Prop. Est. Assessed Value $ @ $ per $1000 - - - _____
25. Empl. Payroll Tax - - - - - - - - _____
26. Other - - - - - - - - - - - - - - - _____
27. Other - - - - - - - - - - - - - - - _____
28. TOTAL TAXES - - - - - - - - - - - $ _____
29. TOTAL EXPENSE *(Attach Worksheet)* - - - - - - $ _____

F. INCOME COMPUTATIONS:

30. Estimated Project Gross Income *(Line C 32 Page 1)* - - - - - - $ _____
31. Occupancy *(Entire Project)* Percentage - _____ %
32. Effective Gross Income *(Line 30 x Line 31)* - - $ _____
33. Total Project Expenses *(Line 29)* - - - - - - - - $ _____
34. Net Income to Project *(Line 32 – Line 33)* - - - $ _____
35. Expense Ratio *(Line 29 ÷ Line 32)* - - - - - - - - _____ %

G. ESTIMATED REPLACEMENT COST:

36a. Unusual Land Improvements - - $ _____
36b. Other Land Improvements - - - - _____
36c. Total Land Improvements - - - - - - - - - - - - - - $ _____

STRUCTURES–

37. Main Buildings - - - - - - - - - - $ _____
38. Accessory Buildings - - - - - - - - _____
39. Garages - - - - - - - - - - - - - - - _____
40. All Other Buildings - - - - - - - - _____
41. TOTAL STRUCTURES - - - - - - - - $ _____
42. General Requirements - - - - - - - - - - - - - - - - $ _____

FEES–

43. Builder's Gen. Overhead @ _____ % - - - - - - - - - $ _____
44. Builder's Profit @ _____ % - - - - - - - - _____
45. Arch. Fee-Design @ _____ % - - - - - - - - _____
46. Arch. Fee-Supvr. @ _____ % - - - - - - - - _____
47. Bond Premium - - - - - - - - - - - _____
48. Other Fees - - - - - - - - - - - - _____
49. TOTAL FEES - - - - - - - - $ _____
50. TOT. For all Emprmts. (Lines 36c, 41, 42 & 49) - - $ _____
51. Cost Per Gross Sq. Ft. - - - - - - - - - - - - - - - $ _____
52. Estimated Construction Time - - - - - - - - - - - _____ Months

CARRYING CHARGES & FINANCING–

53. Int. _____ Mos. @ _____ % on $ _____ - - - $ _____
54. Taxes - - - - - - - - - - - - - - - _____
55. Insurance - - - - - - - - - - - - - _____
56. FHA Mtg. Ins. Prem. (0.5%) _____
57. FHA Exam. Fee (0.3%) _____
58. FHA Inspec. Fee (0.5%) _____
59. Financing Fee (%) _____
60. AMPO (%) _____
61. FNMA/GNMA FEE (%) _____
62. Title & Recording - - - - - - - - - - - _____
63. TOTAL CARRYING CHGS. & FINANCING - - - - - $ _____

LEGAL, ORGANIZATION, & AUDIT FEE

64. Legal - - - - - - - - - - - - - - - - $ _____
65. Organization - - - - - - - - - - - - - - $ _____
66. Cost Certification Audit Fee - - - - $ _____
67. TOTAL LEGAL, ORGANIZATION, AUDIT FEES $ _____
68. Builder and Sponsor Profit & Risk - - - - - - - - - $ _____
69. Consultant Fee - $ _____
70. Supplemental Management Fund - - - - - - - - - - $ _____
71. Contingency Reserve - - - - - - - - - - - - - - - - $ _____
72. TOTAL EST. DEVELOPMENT COST *(Excl. of Land or Off-site Cost)* *(50+63+67+68+69+70+71)* _____
73. Warranted Price of Land - - - J-1403) _____ sq. ft. @ $ _____ per sq. ft. - - - - - $ _____
74. TOTAL ESTIMATED REPLACEMENT COST OF PROJECT *(Add 72+73)* - - - - - - - - - $ _____

H. MAXIMUM PERMISSIBLE RENTAL ANALYSIS:

1. Rent Formula Residential Total Rent Per Month _____

APARTMENT TYPE	0 BEDROOM	1 BEDROOM	2 BEDROOM	3 BEDROOM	4 BEDROOM
2. Monthly Administrative Rent Limits - - - - - - - - (NOTE: Each limit must be followed by E for exception or R for regular)	$	$	$	$	$
3. Personal Benefit Expenses - - - - - - - - - - - - - -					
4. Administrative Rent Limits Less Personal Benefit Expenses - - - - - - - - - - - - - -					
5. Unit Basic Rents -					
6. Unit Market Rents by Rent Formula - - - - - - - - -					
7. Unit Market Rents by Comparison - - - - - - - - - -					

*Attach Documentation

I. ESTIMATE OF OPERATING DEFICIT: *

Periods	Gross Income	Occup. %	Effec. Gross	Expenses	Net Income	Debt Serv. Reqmt.	Deficit
1. 1st	$	%	$	$	$	$	$
2. 2nd	$	%	$	$	$	$	$
						3. TOTAL OPERATING DEFICIT	$

Comparison*

J. PROJECT SITE ANALYSIS AND APPRAISAL:

1. Is Location and Neighborhood Acceptable - ☐ YES ☐ NO
2. Is Site Adequate in Size for Proposed Project ☐ YES ☐ NO
3. Is Site Zoning Permissive for Intended Use ☐ YES ☐ NO
4. Are Utilities Available Now to Serve the Site ☐ YES ☐ NO
5. Is there a Market at this Location for the Rents by Comparison shown in Section C ☐ YES ☐ NO

6. ☐ Site Acceptable for type of Project Proposed under Section _____
   ☐ (If checked, acceptance subject to qualifications listed below)
7. ☐ Site not acceptable for reasons stated below.

Date of Inspection _____

By: _____

8. VALUE FULLY IMPROVED: LOCATION OF PROJECT: L.U.I. NUMBER _____ SIZE OF SUBJECT SITE: _____ Sq. Ft.

COMPARABLE SALES ADDRESS*	Date of Sale	Sales Price	Size Sq. Ft.	Price per Sq. Ft.	Units Permitted	Price per Unit	ADJUSTMENTS (%) Time	Location	Zoning	Plottage	Demolition	Filing, Etc	Other	Total Adjust Factor	Adjust Sq. Ft. Price	Indicated Value by Comparison
1.																
2.																
3.																
4.																
5.																

*Attach Land Sales Data

Remarks:

9. Value of Site Fully Improved: $ _____

10. VALUE "AS IS"			Ft./Acres												

11. Value of Site "As Is" by Comparison: $ _____

12. ACQUISITION COST: (Last Arms-Length Transaction)

Buyer _____ Address _____

Seller _____ Address _____

Date _____ Price $ _____

Source _____

13. OTHER COSTS:

(1) Legal Fees and Zoning Costs ---------- _____
(2) Recording and Title Fees ---------- _____
(3) Interest on Investment ---------- _____
(4) Other ---------- _____
(5) Acquisition Cost (From "12" Above) ---------- _____
(6) Total Cost to Sponsor ---------- $ _____

14. VALUE OF LAND AND COST CERTIFICATION:

(1) Fair Market Value of Land fully improved (From "9" above) ---------- $ _____
(2) Deduct unusual items included in Section G, item 36a ---------- $ _____
(3) Warranted price of land fully improved (Replacement Cost items excluded enter in Line G-72) $ _____

FOR COST CERTIFICATION PURPOSES -

(3)(a) Deduct cost of demol. $ _____ and req'd off-sites $ _____ to be paid by Mtgor. or by special assessments ---------- $ _____
(4) Estimate of "As Is" by subtraction from improved value ---------- $ _____
(5) Estimate of "As Is" by direct comparison with similar unimproved sites (From "11" above) ---------- $ _____
(6) "As Is" based on acquisition cost to sponsor (From 13(6) above) ---------- $ _____
(7) Commissioner's estimated value of land "As Is" (The lesser of 4 or 5 above)* ---------- $ _____
(If "As Is" is more than 13(6), complete explanation is required.)

*Where land is purchased from LPA or other Governmental authority for specific reuse lesser of 4, 5 or 6.

- 4 -

K. INCOME APPROACH TO VALUE:

1. Estimated Remaining Economic Life _____ Yrs.
Income Approach to Value:
2. Capitalization Rate Determined By: __ Overall Rate From Comparable Projects.
__ Rate From Band of Investment __ Cash Flow to Equity.
3. Rate Selected _____ %
4. Net Income (Line F 44) - - - - - - - - - $ _____
5. Capitalized Value (Line 4 ÷ Line 3) - $ _____

6. Value of Leased Fee (If any)
Ground Rent $ _____ ÷ Cap. Rate ____ %
= Value of Leased Fee $ _____

L. COMPARISON APPROACH TO VALUE:

7. Address of Comparable Sale	Date	Sale Price	No. Units			
a.						
b.						
c.						

8. Indicated Value of Subject by Comparison $ _____

APPRAISAL SUMMARY

9. CAPITALIZATION $ _____ SUMMATION $ _____ COMPARISON $ _____
The fair market value (or replacement cost) of the property, as of the date below, is $ _____

M. TO BE COMPLETED BY CONSTRUCTION COST ANALYST:

COST NOT ATTRIBUTABLE TO DWELLING USE-

10. Parking - $ _____
11. Garage - _____
12. Commercial - _____
13. Special Ext. Land Improvements - - - - - - - - - - - _____
14. Other - _____
15. TOTAL - - - - - - - - - - - - - - - - $ _____
_____ %

TOTAL EST. COST OF OFF-SITE REQUIREMENTS-

16. Off-Site — Est. Cost
_____ $ _____
_____ _____
_____ _____
_____ _____
_____ _____
_____ _____
17. TOTAL OFF-SITE COSTS- - $ _____

N. TO BE COMPLETED BY VALUATION SECTION:

CALCULATION OF BUDGETED CONSTRUCTION COST-

18. Maximum Mortgage Amount (from 2264a) = 90% or × 100% - - - - - - - - - - - - - - $ _____
(Whichever is Appropriate)
19. FHA Land Value (Line G 73) $ _____
20. Carrying Charges and Fin. - - _____
21. Legal, Organization, Audit Fees _____
22. Consultant Fee - - - - - - - - _____
23. Design Architect - - - - - - - _____
24. Supervisory Architect - - - - _____
25. Bond Premium - - - - - - - - - _____
26. Supplemental Management Fund _____
27. Contingency Reserve- - - - - _____
28. Other Fees- - - - - - - - - - - _____
29. Total 19 thru 28 – Deduct - $
30. Balance available for construction - - - - - - - - $ _____
31. This includes builder's fee of $ _____
or Bldrs. Ovhd. & BSPRA of $ _____

O. REMARKS, CONCLUSIONS AND SIGNATURES:

EXPLAIN – ☐ UNUSUAL LAND IMPROVEMENTS (Sec. G 36a) HANDBOOK 4465.1, PAGES 2-2 AND 2-3
☐ OTHER FEES (Sec. G 48) HANDBOOK 4450.1, PAGE 5-10 ☐ LOW MAINTENANCE MATERIALS

_____ _____ _____
(Architectural Processor) (Date) (Architectural Reviewer)

_____ _____ _____
(Valuation Processor) (Date) (Valuation Reviewer)

_____ _____ _____
(Cost Processor) (Date)

Conclusions: _____

_____ _____ _____ _____
Coordinator Date Director HPMC Division/Chief Underwriter Date

_____ _____
Director Area or Insuring Office/Deputy (Date)

Supplement to Project Analysis

Section/Title _____

U.S. Department of Housing and Urban Development
Office of Housing

OMB No. 2502-0338 (Exp. 6-30-91)

☐ Feasibility ☐ Conditional ☐ Firm

Name of Mortgagor | Project No.

Name of Project

Location of Project (Street, City and State)

TYPE OF MORTGAGOR

☐ Private ☐ Profit ☐ Public ☐ Non-Profit ☐ State or Federal Instrumentality, etc.
☐ Management Coop. ☐ Sales Coop. ☐ Investor-Sponsor ☐ Builder-Seller ☐ Limited Distribution

TYPE OF PROJECT

☐ Rental Housing ☐ Nursing Home ☐ New Construction ☐ Non-Elevator
☐ Cooperative ☐ Intermediate Care Facility ☐ Rehabilitation ☐ Elevator
☐ Condominium ☐ Housing for the Elderly ☐ Redevelopment ☐ Existing
☐ Land Development ☐ Mobile Home Court ☐ Supplement Loan ☐ _____
☐ Board and Care

I - DETERMINATION OF MAXIMUM INSURABLE MORTGAGE

CRITERIA	(COL. 1)	(COL. 2)	(COL. 3)
1. MORTGAGE OR LOAN AMOUNT REQUESTED IN APPLICATION			$
2. STATUTORY DOLLAR LIMIT			$
3. AMOUNT BASED ON VALUE OR REPLACEMENT COST:			
a. Value (Replcmt. Cost) in Fee Simple $ ____ × ____ %		$	
b. Value of Leased Fee $ ____ × ____ %	$		
c. Unpaid Balance of Special Assessment	$		
d. Total Item b Plus Item c		$	
e. Item a Minus Item d			$
4. AMOUNT BASED ON LIMITATIONS PER FAMILY UNIT:			
a. Number of no Bedroom Units ____ × $ ____	$		
Number of one Bedroom Units ____ × $ ____	$		
Number of two Bedroom Units ____ × $ ____	$		
Number of three Bedroom Units ____ × $ ____	$		
Number of four or more Bedroom Units ____ × $ ____	$		
b. Cost not Attributable to Dwelling Use $ ____ × ____ %	$		
c. Item a Plus Item b		$	
d. Total Number of Spaces ____ × $ ____		$	
e. Sum: Value of Leased Fee and Unpaid Balance of Special Assessment(s)		$	
f. Item c or Item d whichever is applicable - minus Item e			$
5. AMOUNT BASED ON DEBT SERVICE RATIO:			
a. Mortgage Interest Rate	____ %		
b. Mortgage Insurance Premium Rate	____ %		
c. Initial Curtail Rate	____ %		
d. Sum of Above Rates		____ %	
e. Net Income $ ____ × ____ %		$	
f. Annual Ground Rent $ ____ + Annual Spec.Ass'mt. $ ____		$	
g. Item e Minus Item f		$	
h. Item g Divided by Item d			$
6. AMOUNT BASED ON ESTIMATED COST OF REHABILITATION PLUS: (i) "As Is" Value, or (ii) Acquisition Cost, or (iii) Existing Mortgage Indebtedness Against Property Before Rehabilitation:			
a. Estimated Cost of New On-Site Improvements	$		
b. Estimated Cost of New Off-Site Construction	$		
c. Total Carrying Charges, Financing and Contingency Reserve	$		
d. Total Legal, Organization and Consultants Fee, if any	$		
e. Sum of Item a through Item d		$	
f. "As Is" Value of Prop. Before Rehab. $ ____ × ____ %	$		
g. Existing Mortgage Indebtedness (Property Owned) or Purchase Price of Property (To be Acquired)	$		
h. Item e Plus Item f or Item g, whichever is lesser		$	
i. Item h × ____ %			$
7. AMOUNT BASED ON MORTGAGOR'S TOTAL COST OF ACQUISITION:			
a. Purchase Price of Project	$		
b. Repairs and Improvements, if any	$		
c. Total Carrying Charges, Financing, Legal and Organization	$		
d. Sum of Item a through Item c		$	
e. Item d × ____ %			$

Replaces FHA-2264-A, which may be used until supply is exhausted

Form HUD-92264-A (4-89)
ref. Handbooks 4480.1 & 4601.1

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
Office of Housing

OMB No. 2502-0331
Expires 6-30-91

ESTIMATES OF MARKET RENT BY COMPARISON

1. UNIT TYPE	2. SUBJECT PROPERTY	A.	B.	C.	D.	E.

CHARACTERISTICS	DATA	ADDRESS			ADDRESS			ADDRESS			ADDRESS			ADDRESS		
		DATA	ADJUSTMENTS −	ADJUSTMENTS +	DATA	ADJUSTMENTS −	ADJUSTMENTS +	DATA	ADJUSTMENTS −	ADJUSTMENTS +	DATA	ADJUSTMENTS −	ADJUSTMENTS +	DATA	ADJUSTMENTS −	ADJUSTMENTS +
3. Eff. Date of Rental																
4. Type of Project/Stories																
5. Year Built																
6. Sq. Ft. Area																
7. Number of Bedrooms																
8. Number of Baths																
9. Number of Rooms																
10. Balc./Terrace/Patio																
11. Garage or Carport																
12. EQUIP: a. A/C																
b. Range/Oven																
c. Refrigerator																
d. Disposal																
e. Vent Fan																
f. Dishwasher																
g. Carpet/Drapes																
h. Pool/Rec. Area																
13. SERV: a. Heat/Type																
b. Cook/Type																
c. Electricity																
d. Water Cold/Hot																
14. Storage																
15. Project Location																
16. Other																
17. Unit Rent Per Month																
18. Net Adjustment w/o Trend and Spec. Adj.																
19. Indicated Rent w/o Trend and Spec. Adj.																

NOTE: *If prevailing vacancy rates are lower than 5%, indicating a tight rental market, the correlated subject rent should be derived from the high end of the range of the indicated rents from Line 19.*

20. Correlated Subject Rent	
21. Occupancy Date ____ Trend ____ % ____ %	
22. Subject Rent With Trend	
23. Spec. Adjustments	
a. Mgt./Amen. ____ %	
b. Financing ____ %	
24. Adjusted Subject Rent	

SECTION 8 PROJECTS ONLY	W/O DIRECTOR'S ADJUSTMENTS	W DIRECTOR'S ADJUSTMENTS
25. Mtg. Ins. Processing Rent		
26. Sec. 8 Rent Estimate *(Include financing adjustments, if appropriate)*		

REMARKS

NOTE: *In the adjustments column, enter dollar amounts by which subject property varies from comparable properties. If subject is better, enter a "Plus" amount and if subject is inferior to the comparable, enter a "Minus" amount. Use reverse to explain adjustments as needed.*

(Signature of Appraiser) *(Date)* *(Signature of Reviewer)* *(Date)*

Replaces FHA Form 2273 which is obsolete

HUD-92273 (9-78)

OMB No. 2502-0331(Exp 6-9

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT HOUSING – FEDERAL HOUSING COMMISSIONER **OPERATING EXPENSE ANALYSIS WORKSHEET**	PROJECT NAME	PROJECT NUMBER
CITY	ANTICIPATED DATE OF INITIAL PROJECT OCCUPANCY *(Mo. & Yr.)* ▶	
SIGNATURE OF PROCESSOR	SIGNATURE OF REVIEWER	DATE

Project Name				
Project Number				
Location				
Type of Project & No. of Stories				
Type of Construction				
No. of Living Units				
Age of Project				
Project Unit Composition	BRM ( ) BRM ( ) BRM ( ) BRM ( )	BRM ( ) BRM ( ) BRM ( ) BRM ( )	BRM ( ) BRM ( ) BRM ( ) BRM ( )	BRM ( ) BRM ( ) BRM ( ) BRM ( )
No. of Each Type Unit				
Sq. Ft. Each Type Unit				
Average Unit Area				
Same Tax Rate as Subject*				
Same Utility Rate*				
Effective Date / Updating Operating Yr./Percentage	/ %	/ %	/ %	/ %
Equip. & Services Incl. Rent**				

EQUIPMENT INCLUDED IN RENT:
[1] Ranges & Refrig. [2] Carpet & Drapes [3] Disposal
[4] Dishwasher [5] Laundry Fac. [6] Air Cond.
[7] Kit. Exhaust Fan [8] Other

SERVICES INCLUDED IN RENT:
Gas: [9] Heat; [10] Cooking; [11] Hot Water; [12] A/C
Elec: [13] Heat; [14] Cooking; [15] Hot Water; [16] A/C [17] Lights Unit
Other Fuel: [18] Heat; [19] Hot Water [20] Water [21] Other

Items of Expense by Unit of Comparison***	EXP.	ADJ. + –	IND. EXP.	EXP.	UP. DATED EXP	ADJ. + –	IND. EXP.	EXP.	UP. DATED EXP	ADJ. + –	IND. EXP.	EXP.	UP. DATED EXP	ADJ. + –	IND. EXP.	CORRELATED EXPENSE
1. Advertising																
2. Management																
3. Other																
4. Total Admin.																
5. Elevator																
6. Fuel																
7. Lighting and Misc. Power																
8. Water																
9. Gas																
10. Garbage & Trash Removal																
11. Payroll																
12. Other																
13. Total Oper.																
14. Decorating																
15. Repairs																
16. Exterminating																
17. Insurance																
18. Ground Expense																
19. Other																
20. Total Maint.																
20a. Total Operating Expense Exclusive of Reserve Time and Trend *(Sum of Lines 4, 13 and 20)*																
20b. Trend Adjustment (_____ % x 20a) To *(date)* _____ Annual Rate _____ %																
21. Replacement Reserve *(Per Applicable Formula from Forms HUD-92264 or HUD-92264B)*																
22. Total Operating Expenses Including Reserve Time and Trend *(Sum of Lines 20a, 20b and 21)*																
23. Taxes/Real Estate																
24. Personal Prop. Tax																
25. Empl. Payroll Tax																
26. Other																
27. Other																
27a. Total Taxes w/o Trend																
27b. Trend Adjustment (_____ % x 27a) To *(date)* _____ Annual Rate _____ %																
28. Total Taxes *(Including Time and Trend) (Sum of Lines 27a and 27b)*																
29. Total Expense *(Sum of Lines 22 and 28)*																

* If "NO," reflect in adjustments. *(USE REVERSE TO EXPLAIN ADJUSTMENTS AS NEEDED)* HUD-92274 (8-82)
** Enter appropriate numbers from table for subject and comparables and reflect in adjustments. (HB 4480.1)
*** Enter expense items in suitable unit of comparison

Statement of Profit and Loss

All amounts must be rounded to the nearest dollar; $.50 and over, round up; $.49 and below, round down.

U.S. Department of Housing and Urban Development
Office of Housing
Federal Housing Commissioner

OMB Approval No. 2502-0052 (Exp. 8-31-92)

For Month/Period Beginning	Ending	Project Number	Project Name

Part 1:	Description of Account	Acct. No.		
5000-Revenue Accounts	**Rental Income — 5100**			
	Apartments or Member Carrying Charges (Coops)	5120	$	
	Tenant Assistance Payments	5121	$	
	Furniture and Equipment	5130	$	
	Stores and Commercial	5140	$	
	Garage and Parking Spaces	5170	$	
	Flexible Subsidy Income	5180	$	
	Miscellaneous (specify)	5190	$	
	Total Rent Revenue *Potential at 100% Occupancy*			$
	Vacancies — 5200 Apartments	5220	( )	
	Furniture and Equipment	5230	( )	
	Stores and Commercial	5240	( )	
	Garage and Parking Spaces	5270	( )	
	Miscellaneous (specify)	5290	( )	
	Total Vacancies			( )
	Net Rental Revenue *Rent Revenue Less Vacancies*			$
	Elderly and Congregate Services Income — 5300 **Total Service Income** *(Schedule Attached)*	5300		$
	Financial Revenue — 5400 Interest Income-Project Operations	5410	$	
	Income from Investments-Residual Receipts	5430	$	
	Income from Investments-Reserve for Replacement	5440	$	
	Income from Investments—Miscellaneous	5490	$	
	Total Financial Revenue			$
	Other Revenue — 5900 Laundry and Vending	5910	$	
	NSF and Late Charges	5920	$	
	Damages and Cleaning Fees	5930	$	
	Forfeited Tenant Security Deposits	5940	$	
	Other Revenue (specify)	5990	$	
	Total Other Revenue			$
	Total Revenue			$
6000-Project Expense Accounts	**Administrative Expenses — 6200/6300** Advertising	6210	$	
	Other Renting Expense	6250	$	
	Office Salaries	6310	$	
	Office Supplies	6311	$	
	Office or Model Apartment Rent	6312	$	
	Management Fee	6320	$	
	Manager or Superintendent Salaries	6330	$	
	Manager or Superintendent Rent Free Unit	6331	$	
	Legal Expenses (Project)	6340	$	
	Auditing Expenses (Project)	6350	$	
	Bookkeeping Fees/Accounting Services	6351	$	
	Telephone and Answering Service	6360	$	
	Bad Debts	6370	$	
	Miscellaneous Administrative Expenses (specify)	6390	$	
	Total Administrative Expenses			$
	Utilities Expense — 6400 Fuel Oil/Coal	6420	$	
	Electricity	6450	$	
	Water	6451	$	
	Gas	6452	$	
	Sewer	6453	$	
	Total Utilities Expense			$
	Total Expenses *(Carry forward to Page 2)*			$

Replaces HUD 92408 and HUD 92410-NH Which Are Obsolete
Previous Editions Obsolete

Ref. Hb 4370.2

HUD-92410 (6-87)

6000–Project Expense Accounts (continued)

Operating and Maintenance Expenses — 6500	Acct. No.	Carried forward from Page 1 $
Janitor and Cleaning Payroll	6510	$
Janitor and Cleaning Supplies	6515	$
Janitor and Cleaning Contract	6517	$
Exterminating Payroll/Contract	6519	$
Exterminating Supplies	6520	$
Garbage and Trash Removal	6525	$
Security Payroll/Contract	6530	$
Grounds Payroll	6535	$
Grounds Supplies	6536	$
Grounds Contract	6537	$
Repairs Payroll	6540	$
Repairs Material	6541	$
Repairs Contract	6542	$
Elevator Maintenance/Contract	6545	$
Heating/Cooling Repairs and Maintenance	6546	$
Swimming Pool Maintenance/Contract	6547	$
Snow Removal	6548	$
Decorating Payroll/Contract	6560	$
Decorating Supplies	6561	$
Vehicle & Maint. Equip. Operation and Repairs	6570	$
Miscellaneous Operating & Maintenance Exp.	6590	$
Total Operating & Maintenance Expenses		$
Taxes and Insurance — 6700		
Real Estate Taxes	6710	$
Payroll Taxes (FICA)	6711	$
Miscellaneous Taxes, Licenses and Permits	6719	$
Property and Liability Insurance (Hazard)	6720	$
Fidelity Bond Insurance	6721	$
Workmen's Compensation	6722	$
Health Insurance & Other Employee Benefits	6723	$
Other Insurance (specify)	6729	$
Total Taxes and Insurance		$
Financial Expenses — 6800		
Interest on Bonds Payable	6810	$
Interest on Mortgage Payable	6820	$
Interest on Notes Payable (Long-Term)	6830	$
Interest on Notes Payable (Short-Term)	6840	$
Mortgage Insurance Premium/Service Charge	6850	$
Miscellaneous Financial Expenses	6890	$
Total Financial Expenses		$
Elderly and Congregate Service Expenses — 6900		
Total Service Expenses—Schedule Attached	6900	$
Total Cost of Operations before Depreciation		$
Profit (Loss) before Depreciation		$
Depreciation (Total) — 6600 (specify)	6600	$
Operating Profit or (Loss)		$
Corporate or Mortgagor Entity Expenses — 7100		
Officer Salaries	7110	$
Legal Expenses (Entity)	7120	$
Taxes (Federal-State-Entity)	7130-32	$
Other Expenses (Entity)	7190	$
Total Corporate Expenses		$
Net Profit or (Loss)		$

Miscellaneous or other Income and Expense Sub-account Groups. If miscellaneous or other income and/or expense sub-accounts (5190, 5290, 5490, 5990 and 7190) exceed the Account Groupings by 10% or more, attach a separate schedule describing or explaining the miscellaneous income or expense.

Part II

1. Total principal payments required under the mortgage, even if payments under a Workout Agreement are less or more than those required under the mortgage $
2. Replacement Reserve deposits required by the Regulatory Agreement or Amendments thereto, even if payments may be temporarily suspended or waived $
3. Replacement or Painting Reserve releases which are included as expense items on this Profit and Loss statement $
4. Project Improvement Reserve Releases under the Flexible Subsidy Program that are included as expense items on this Profit and Loss Statement $

Personal Financial and Credit Statement

U.S. Department of Housing and Urban Development
Office of Housing —
Federal Housing Commissioner

OMB No. 2502-0001 (Exp. 11/30/

Project Name | Number | Location

Statement of | Date | Address

Assets

	Balance	Total
Cash on hand in banks (Name of depository)		
	$	
		$
Accounts Receivable	$	
Less: Doubtful Accounts		
Notes Receivable	$	
Less: Doubtful Notes		
Stocks and Bonds — Market Value (Schedule A — reverse side)		
Other Current Assets: (describe)		
	$	
Total Current Assets		$
Real Property — at net* (Schedule B — reverse side)		
Machinery Equipment and Fixtures — at net		
Life Insurance (Cash value less loans)		
Other Assets (describe)		
	$	
Total Assets		$

Liabilities and Net Worth

Accounts Payable		$
Notes Payable		
Debts payable in less than one year (secured by mortgages on land and buildings)		
Debts payable in less than one year (secured by chattel mortgages or other liens on assets)	$	
	$	
Other current liabilities: (describe)		
	$	
Total Current Liabilities:		$
Debts payable in more than one year (secured by mortgages on land and buildings)		
Debts payable in more than one year (secured by chattel mortgages or other liens on assets)		
Other liabilities (describe)		
	$	
Total Liabilities		$
Net Worth		
Total Liabilities and Net Worth		$

*Cost, including improvements, less depreciation.

Accounts and Notes Receivable

Partner (P) Employee (E) Relative (R) or Other (O)*

Type (P,E,R or O)*	Name	Address	Maturity Date	Amount

Life Insurance	Face Value	Beneficiary

Delinquencies

Type Liability	Amount	Circumstances

Accounts and Notes Payable

Type (P,E,R or O)*	Name	Address	Amount	Maturity Date

Pledged Assets

Type Pledged	Amount	Offsetting Liability

Note: If more space is required use a separate sheet of paper

Replaces FHA-2417 which is obsolete.

HUD-92417 (4-85)
24 CFR 200.143

Legal Proceedings *(If any legal proceedings have been instituted by creditors, or any unsatisfied judgments remain on record, give full details.)*

Schedule A — Stocks and Bonds

Description	Current Market Value *(At date of this Statement)*	If Listed, Name Exchange

Schedule B — Real Property *(Indicate Private Residence, if any)*

Location and Description of Land and Buildings Owned	Age	Original Cost	Market Value	Assessed Value	Mortgaged For —	Insured For —
Totals						

Title *(The legal and equitable title to all pieces of the above-described real estate is solely in my name, except as follows:)*

Location of Real Property	Name of Title Holders

Bank and/or Trade References

Name and Address	Account Numbers

I hereby certify that the foregoing figures and the statements contained here, submitted to obtain mortgage insurance under the National Housing Act, are true and give a correct showing of my financial condition as of this date.

Name | Date Signed

Warning — U.S. Criminal Code, Section 1010, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part: "Whoever, for the purpose of ... influencing in any way the action of such Administration ... makes, passes, utters, or publishes any statement, knowing the same to be false, ... shall be fined not more than $5,000 or imprisoned not more than two years, or both."

U.S. ARTMENT OF HOUSING AND URBAN DEVELO' 'NT
USING – FEDERAL HOUSING ADMINISTRATIC

OMB 2502-0331
Expires 6-30-91

REPORT OF COST PROCESSING–WORK SHEET

Name of Subject: _____ Project Number: _____
Name of Comparable: _____ Project Number: _____

BLOCK A. SELECTION OF COMPARABLE

ITEM DESCRIPTION	SUBJECT CASE NO.	COMP. NO. 1 NO.	COMP. NO. 2 NO.	COMP. NO. 3 NO.
1. Type of project				
2. Sub-type design				
3. Structural system				
4. Resid./Gross Area Ratio				
5. Number of Units				
6. Gross Floor Area				
7. Floor System (Structural)				
8. Number of Stories				
9. Number of Buildings				
10. Exterior Finish				
11. Net Residential Area				
12. Net Commercial Area				
13. Number of Basements				
14. Type of Foundation				
15. Number of Full Baths				
16. Number of Half Baths				
17. Heating and A/C System				
18. Effective Cost Date				
19. Firm or Certified Data				
20. Unusual Site Conditions				

BLOCK B: PER UNIT, PER FIXTURE AND PER STOP BY COMPARISON

	COMPARABLE UNADJUSTED COST		X	SUBJECT NO., OF UNITS, FIXTURES, STOPS	= SUBJECT Col., C., of Form 2326 UNADJUSTED	
1. Tilework	$	Per Unit		$		
2. Specialties	$	Per Unit		$		
3. Special Equipment	$	Per Unit		$		
4. Cabinets	$	Per Unit		$		
5. Appliances	$	Per Unit		$		
6. Blinds, Shades, Artwork	$	Per Unit		$		
7. Elevators	$	Per Stop (No.:)		$		(No.,Stops:
8. Plumbing and Hot Water	$	Per Fixture (No.:)		$		(No.,Fixtures:
9. Heating	$	Per Unit		$		
10. Air Conditioning	$	Per Unit		$		
11. Electrical	$	Per Unit		$		
12.		UNADJUSTED TOTAL		$		

BLOCK C: LUMP SUM TRADE ITEM ADJUSTMENTS

DESCRIPTION AND BENCH MARK USED FOR ADJUSTMENTS	TOTAL AMOUNT	2326 LINE NO.
	+ – $	
	+ – $	
	+ – $	
	+ – $	
	+ – $	
	+ – $	
	+ – $	
	+ – $	
	+ – $	
	+ – $	
Net + – $		

BLOCK D: DEVELOPMENT OF TOTAL STRUCTURE COST FOR SUBJECT CASE

1. Time/Location Multiplier: a. _____ X b. _____ = c. _____ X d. _____ = e. _____ (Time/Location Multiplier)

2. Area Adjustment: $ _____ (Line 32, Column B 2326 of Comparable) X _____ (T and L Multiplier Line 1.e. above) = _____ (Updated S. F. Cost Comp.) X _____ (Gross Floor Area Subject) = $ _____ (Total $ Amount, Column B Items)

3. Unit Items Adjustment: $ _____ (Total Amount, Block B Subject Project) X _____ (Time/Location Multiplier) = $ _____ (Total $ Amount, Column C Items)

4. Enter Net plus (+) or minus (–) Lump Sum Adjustments from Block C + – $ _____

5. Total Structure Cost (Total Lines 2, 3 and 4 above) $ _____

6. Total S. F. Cost of Structure $ _____ (Line 5 Above) divided by _____ (Line 6, Block A, Subject) = $ _____ (S. F. Cost Subject)

BLOCK E: DEVELOPMENT OF ACCESSORY BUILDINGS COST (LINE 33, FORM 2326)

BENCH MARK	DESCRIPTION	DOLLAR AMOUNT
		$
		$
		$
		$
	TOTAL ACCESSORY BUILDINGS COST	$

Previous editions are obsolete

FHA–2328 (9/77)

BLOCK F: DEVELOPMENT OF LAND IMPROVEMENT COST (Line 41, Form 2326)		
Bench Mark	Description	Dollar Amount
Earthworks:		
1.		
2.		
3.		
4. Total for Earthworks (Line 35, Form 2326)		$
Site Utilities:		
5.		
6.		
7.		
8.		
9.		
10.		
11.		
12. Total for Site Utilities (Line 36, Form 2326)		$
Roads and Walks:		
13.		
14.		
15.		
16.		
17.		
18.		
19.		
20. Total for Roads and Walks (Line 37, Form 2326)		$
Site Improvements:		
21.		
22.		
23.		
24.		
25. Total for Site Improvements (Line 38, Form 2326)		$
Lawns and Planting:		
26.		
27.		
28.		
29. Total for Lawns and Planting (Line 39, Form 2326)		$
Unusual Site Conditions:		
30.		
31.		
32.		
33. Total for Unusual Site Conditions (Line 40, Form 2326)		$
TOTAL–LAND IMPROVEMENT COST (Lines 4, 12, 20, 25, 29 and 33) Enter on Line 41 of Form 2326		$

BLOCK G: DEVELOPMENT OF SUPPLEMENTARY ESTIMATES		
Bench Mark	Description	Dollar Amount
Onsite Special Exterior Land Improvements:		
34.		
35.		
36.		
37. Total for Onsite Special Exterior Land Improvements		$
Cost Not Attributable:		
38.		
39.		
40.		
41.		
42.		
43.		
44.		
45. Total for Cost Not Attributable		$
Offsite Costs:		
46.		
47.		
48.		
49.		
50. Total for Offsite Costs		$
Demolition:		
51.		
52.		
53. Total for Demolition		$
Other Fees:		
54.		
55.		
56.		
57.		
58.		
59.		
60. Total for Other Fees		$

☐ CONDITIONAL ☐ OR FIRM

(Processing Analyst) (Chief, Cost Branch or Cost Analyst) (Date)

(2)

GPO 821-661

FHA–2325 (9/77)

FHA FORM NO. 2326
Rev. 1/75

OMB No. 2502-0331
Expires 6-30-91

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
FEDERAL HOUSING ADMINISTRATION

PROJECT COST ESTIMATE

Effective Cost Date | Source

Project No. | Section of Act

Name of Project (optional)

Type of Project: **Sub-Type Design:**

Building Identification:

Number of Buildings:

Number of Stories:

Number of Units, Beds, Facilities:

Structural System: **Floor Sys. (Structural):**

Exterior Finish Major: **2nd** **3rd**

Type of Foundation:

Number of Basements:

Accessory Structure(s)

Gross Land Area and SF Cost:

Comparable Data Bank Projects:

NET AND GROSS FLOOR AREAS:

Net Residential
Net Commercial
Net Basement & Storage
Net Garage (Built-In)
Net Lobby
Net Halls, Stairs, Elevators
Net
Net
Net
Residual Areas
TOTAL GROSS FLOOR AREA →

DIV.	TRADE ITEM	Cost	ESTIMATED COST	COL. B GROSS S.F. COST	COL. C PER UNIT COST	% OF TOTAL	+ OR CHANGE
3	Concrete						
4	Masonry						
5	Metals						
6	Rough Carpentry						
6	Finish Carpentry						
7	Waterproofing						
7	Insulation						
7	Roofing						
7	Sheet Metal						
8	Doors						
8	Windows						
8	Glass						
9	Lath and Plaster						
9	Drywall						
9	Tile Work						
9	Acoustical						
9	Wood Flooring						
9	Resilient Flooring						
9	Painting and Decorating						
10	Specialties						
11	Special Equipment						
11	(Cabinets)						
11	Appliances						
12	Blinds, Shades, & Artwork						
12	Carpets						
13	Special Construction						
14	Elevators						
15	Plumbing and Hot Water						
15	Heat and Ventilation						
15	Air Conditioning						
16	Electrical						
	SUBTOTAL *(Structures)*	$				100%	
	Accessory Structures						
	TOTAL (lines 32 & 33)	$					
* 2	Earthwork						
* 2	Site Utilities						
* 2	Roads and Walks						
* 2	Site Improvements						
* 2	Lawns and Planting						
* 2	Unusual Site Conditions						
*	**TOTAL** *(Land Improvement)*	$				100%	
	TOTAL (lines 34 & 41) "A"	$					
1	General Requirements					%	
	SUBTOTAL (lines 42 & 43)	$					
	Builder's Overhead					%	
	Builder's Profit					%	
	SUBTOTAL (lines 44 thru 46)	$					
	Architect Fee *(Prior to Const.)*					%	
	Architect Fee *(During Const.)*					%	
	Other Fees					%	
	Bond Premium					%	
	SUBTOTAL (lines 45, 46, 48 thru 51)	$					
	TOTAL FOR ALL IMPROVEMENTS						

* S.F. Costs Based on Gross Land Area

ESTIMATE PREPARED _____ DATE _____

ESTIMATE REVIEWED _____ DATE _____

Line	Miscellaneous Areas *(Cost Reflected in Total for all Improvements)*	
	Description & Area	Dollar Amount
1		$
2		$
3		$
4		$
5		$
6		$
7		$

	Building Composition and Appliances	
8		
9	GAR. Number	REFRIG. Number
10	C. P.	R & O
11	BATHS full / ½	B. I. R & O
12	EFF.	K-FAN
13	1-BR	B-FAN
14	2-BR	DISPL.
15	3-BR	D. W.
16	4-BR	
17	5-BR	

	Onsite Special Exterior Land Improvement	
18		
19	Description	Cost
20		
21		
22		
23	TOTAL $	

	COST NOT ATTRIBUTABLE	
24		
25	Description	Cost
26		
27		
28		
29		
30		
31		
32	TOTAL "B" $	
33	B $	= %
34	A $	
35	Cost Per Unit, Bed, Facility	
36	$	
37	GROSS AREA	
38	UNIT, BED, FACILITY S.F.	
39	OFFSITE COSTS	
40	Description	Cost
41		
42		
43		
44	TOTAL $	
45	DEMOLITION	
46	Description	Cost
47		
48		
49	TOTAL $	
50	OTHER FEES	
51	Description	Cost
52		
53		
	TOTAL $	

MISCELLANEOUS LABOR AND MATERIAL

TRADE ITEM	ACTUAL COST	DESCRIPTION OF WORK INCLUDED
Structures:	$	
TOTAL	$	
Land Improvements:	$	
TOTAL	$	

GENERAL REQUIREMENTS (Description)	(Cost)
Supervision	$
Field Engineering	
Field Office Expense	
Temporary Facilities	
Temporary Utilities	
Cleaning & Rubbish Removal	
Building Permits	
Watchmen Wages	
Insurance During Construction	
TOTAL	$

OFFSITE CONSTRUCTION (Description)	(Cost)
	$
TOTAL	$

OTHER FEES (Description)	(Cost)
Topographic Survey	$
Test Borings	
Soils Analysis	
TOTAL	$

REMARKS:

OMB No. 2502-0331
Expires 6-30-91

FHA FORM 2326-A
(1/75)

U. S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
FEDERAL HOUSING ADMINISTRATION

PROJECT COST ESTIMATE WORKSHEET FOR STRUCTURAL TRADE ITEMS

PROJECT NAME: _____

PROJECT NUMBER: _____

TRADE ITEM	UNIT	A Unadj. SF/PU Cost X	B Index Factor =	C Updated SF/PU Cost +/–	D Adj. to SF/PU Cost =	E Full Adj. to SF/PU Cost X	F Subject No. of Units Gr. Fl. Area =	G Subject Trade Item Cost
1. Concrete	S.F.							
2. Masonry	S.F.							
3. Metals	S.F.							
4. Rough Carpentry	S.F.							
5. Finish Carpentry	S.F.							
6. Waterproofing	S.F.							
7. Insulation	S.F.							
8. Roofing	S.F.							
9. Sheet Metal	S.F.							
10. Doors	S.F.							
11. Windows	S.F.							
12. Glass	S.F.							
13. Lath and Plaster	S.F.							
14. Drywall	S.F.							
15. Tile Work	P.U.							
16. Acoustical	S.F.							
17. Wood Flooring	S.F.							
18. Resilient Flooring	S.F.							
19. Painting and Decorating	S.F.							
20. Specialties	P.U.							
21. Special Equipment	P.U.							
22. Cabinets	P.U.							
23. Appliances	P.U.							
24. Blinds, Shades, and Artwork	P.U.							
25. Carpets	S.F.							
26. Special Construction	S.F.							
27. Elevators	P.U.							
28. Plumbing and Hot Water	P.U.							
29. Heat and Ventilation	P.U.							
30. Air Conditioning	P.U.							
31. Electrical	P.U.							
32. TOTAL (Structures)								
33. Accessory Structures								

Calculations, Notes, etc.

_____ _____ _____

(Processing Analyst) *(Chief, Cost Branch or Cost Analyst)* *(Date)*

OMB No. 2502-0331
Expires 6-30-91

Supplementary Conditions of the Contract for Construction

U.S. Department of Housing and Urban Development

Article 1 - Labor Standards

Instructions

Whenever only FHA mortgage insurance is involved, use paragraph (A) and (C) of Article 1 - Labor Standards. Whenever any direct form of assistance (Section 8, Section 202, direct loans, grants etc.) is involved, use paragraphs (A) and (B) and (C) of Article 1 - Labor Standards.

Applicability

The Project or Program to which the construction work covered by this contract pertains is being assisted or insured by the United States of America and the following Federal Labor Standards Provisions are included in this Contract or related instrument pursuant to the provisions applicable to such Federal assistance or insurance.

A. 1. (i) Minimum Wages. All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR Part 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(a) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(b) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

(c) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

(d) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs A.1.(ii)(b) or (c) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

(2) Withholding. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner,

take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

3. (i) **Payrolls and basic records.** Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5 (a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)

(ii)(a) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR Part 5.5(a)(3)(i). This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, D.C. 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)

(b) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under 29 CFR Part 5.5 (a)(3)(i) and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissable deductions as set forth in 29 CFR Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(c) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph A.3.(ii)(b) of this section.

(d) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph A.3.(i) of this section available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR Part 5.12.

4. (i) **Apprentices and Trainees. Apprentices.** Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) **Trainees.** Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman's hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not

less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR Part 3 which are incorporated by reference in this contract.

6. Subcontracts. The contractor or subcontractor will insert in any subcontracts the clauses contained in 29 CFR 5.5(a) (1) through (10) and such other clauses as HUD or its designee may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR Part 5.5.

7. Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act Requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.

10. (i) Certification of Eligibility. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1010, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part: "Whoever, for the purpose of. . . influencing in any way the action of such Administration. . . makes, utters or publishes any statement, knowing the same to be false. . . shall be fined not more than $5,000 or imprisoned not more than two years, or both."

B. Contract Work Hours and Safety Standards Act. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of eight hours in any calendar day or in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of eight hours in any calendar day or in excess of forty hours in such workweek, whichever is greater.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (1) of this paragraph, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of eight hours or in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in subparagraph (1) of this paragraph.

(3) Withholding for unpaid wages and liquidated damages. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (2) of this paragraph.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph (1) through (4) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraphs (1) through (4) of this paragraph.

C. The Contractor will be required to execute FHA Form No. 2403-A, Contractor's Prevailing Wage Certificate, as a condition precedent to insurance by the Federal Housing Administration of that certain mortgage loan, or an advance thereof, made or to be made by the mortgagee in connection with the construction of the project.

Article 2 – Equal Employment Opportunity

The applicant hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

During the performance of this contract, the Contractor agrees as follows:

A. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. The Contractor agrees to post in conspicuous places available to employees and applicants for employment notices to be provided setting forth the provisions of this nondiscrimination clause.

B. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

C. The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice to be provided advising the said labor union or workers representatives of the Contractor's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

D. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965 and of the rules, regulations, and relevant orders of the Secretary of Labor.

E. The Contractor will furnish all information and reports required by

Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

F. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulations or order of the Secretary of Labor, or as otherwise provided by law.

G. The Contractor will include the portion of the sentence immediately preceding paragraph A and the provisions of paragraphs A through G in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Secretary of Housing and Urban Development or the Secretary of Labor may direct as a means of enforcing such provisions, including sanctions for noncompliance. *Provided, however,* that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Secretary of Housing and Urban Development or the Secretary of Labor, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

H. The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided, That* if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

I. The applicant agrees that it will assist and cooperate actively with the adminstering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

J. The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

Article 3 – Equal Opportunity for Businesses and Lower Income Persons Located Within the Project Area

(Applicable to Section 236 projects, where the estimated replacement cost of the project as determined by the Secretary of Housing and Urban Development exceeds $500,000, and to all projects, including Section 236 regardless of estimated replacement cost, receiving rent supplement assistance under Title I, Section 101 of the Housing and Urban Development Act of 1965)

A. The work to be performed under this contract is on a project assisted under a program providing direct Federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given lower income residents of the unit of local government or the metropolitan area (or nonmetropolitan county) as determined by the Secretary of Housing and Urban Development in which the projects located and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the same metropolitan area (or nonmetropolitan county) as the project.

Article 4 – Health and Safety

A. No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

B. The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 (formerly part 1518) and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act (Public Law 91-54, 83 Stat. 96).

C. The Contractor shall include the provisions of this Article in every subcontract so that such provisions will be binding on each subcontractor. The Contractor shall take such action with respect to any subcontract as the Secretary of Housing and Urban Development of the Secretary of Labor shall direct as a means of enforcing such provisions.

OMB No. 2502-0375
Expires 6-30-91

FORMAT
Rent Roll

Project Name: _____

Rent Roll As Of: _____

A Unit No. & Bedroom Type	B Tenant Name	C Rental Rate	D Length of Lease	E First Occupancy	F Remarks	G HUD-FHA Use Only

This rent roll is made, presented and delivered for the purpose of influencing an official action by the Department of Housing and Urban Development and may be relied upon as a true statement of the facts contained herein.

Date _____ Signature of Owner _____

I certify that I (or any authorized representative) have reviewed the information listed above and have verified the rents being charged for each unit type. I further certify that the stated rental and occupancy rates are correct.

Date _____ Signature of lender _____

OMB No. 2505-0210
Expires 11-30-91

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

CERTIFICATE OF NEED FOR HEALTH FACILITY AND ASSURANCE OF ENFORCEMENT OF STATE STANDARDS

☐ Hospital
☐ Nursing Home
☐ ICF
☐ Other_____

TO THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT: In accordance with the provisions of the National Housing Act, as amended, and applicable portions of Titles VI, or XV, or XVI of the Public Health Service Act, this agency _____ certifies as follows:
(Name of Agency)

1. This facility will provide _____
(Types of Services)
without duplicating such services already adequately provided within the service area and without exceeding present needs for such services in the area.

2. In accordance with the approved State Health Plan and The State CoN requirements or Section 1122 (SSA) requirements, there is a need for _____ (Number of Beds) to be constructed and/or _____ (Number of Beds) to be modernized, to be located at _____ in service area _____.

3. This HUD Certification of Need for service area stated above in the State of _____ is issued in favor of _____
(Name and Address of Sponsor)
only, for construction and/or modernization of _____
(Name and Address of Project)
only, and is in effect for _____ months from the date of issuance.

4. There are in force in the State (or other political subdivision of the State in which the proposed project will be located) reasonable minimum standards of licensure and methods of operation for this health facility.

5. The prescribed standards of licensure and operation will be applied and enforced with respect to the applicant health facility.

6. Amount of other federal assistance, if any, $_____ from _____.

7. A copy of the State's approval under its CoN Program shall be attached.

_____ (Date Issued)

_____ (Signature)

_____ (Termination Date)

_____ (Title)

_____ (Name of Agency)

_____ (Address and Phone Number of Agency)

HUD-2576-HF (6-31)

[FR Doc. 90-7194 Filed 3-28-90; 8:45 am]
BILLING CODE 4210-27-C

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Alaska AA-48819-AM]

Proposed Reinstatement of a Terminated Oil and Gas Lease

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97-451), a petition for reinstatement of oil and gas lease AA-48819-AM has been received covering the following lands:

Cooper River Meridian, Alaska

T. 7 S., R. 2 E.,
Sec. 31, NW1/4SE1/4.
(40 acres)

The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to $5 per acre per year, and royalty increased to 16 ⅔ percent. The $500 administrative fee and the cost of publishing this Notice have been paid. The required rentals and royalties accruing from October 1, 1989, the date of termination, have been paid.

Having met all the requirements for reinstatement of lease AA-48819-AM as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective October 1, 1989 subject to the terms and conditions cited above.

Dated: March 21, 1990.

Ruth Stockie,

Chief, Branch of Mineral Adjudication.

[FR Doc. 90-7173 Filed 3-28-90; 8:45 am]

BILLING CODE 4310-JA-M

[AZ-010-00-4212-24]

Realty Actions; Sales, Leases, etc.; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action—lease of public lands for airport purposes in Mohave County, Arizona.

SUMMARY: A 5.985 acre parcel described by metes and bounds and located within the following described public lands has been found suitable for lease to the City of Mesquite, Nevada, for airport purposes under the Act of May 24, 1928, as amended (49 U.S.C. Appendix 211-213).

Gila & Salt River Meridian

T. 40 N., R. 16 W.,
Sec. 29, Lots 1 and 2

The lease would be consistent with applicable federal and county land use plans. The land use will help serve public needs for an extension of the Mesquite City airport for general public air transportation. Persons wishing to obtain detailed information on the action including the terms and conditions of the lease may write or call the Shivwits Resource Area Manager, 225 North Bluff Street, St. George, UT 84770, telephone: (801) 628-4491.

This notice segregates the above described public lands from operation of the public land laws, including the mining laws. The segregative effect will end upon issuance of the lease or one year from the date of this publication, whichever occurs first.

For a period of 45 days from the date of this publication, interested parties may submit comments to the District Manager, Bureau of Land Management, Arizona Strip District Office, 390 North 3050 East, St. George, UT 84770. In the absence of any objections, the decision to approve this realty action will become the final determination of the Department of the Interior.

Dated: March 15, 1990.

G. William Lamb,

Arizona Strip District Manager.

[FR Doc. 90-7174 Filed 3-28-90; 8:45 am]

BILLING CODE 4310-32-M

[CO-050-4212-11]

Realty Action; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Recreation and Public Purposes Classification and Application for Lease/Patent, Boulder County, Colorado C-42689 and C-44116.

SUMMARY: The following public land has been examined and found suitable for classification and lease/sale under the Recreation and Public Purposes (R&PP) Act of June 14, 1926, as amended (43 USC 869):

Sixth Prinicipal Meridian

T.1S., R.71W.,
Sec. 10, W½NW¼
T.2N., R.71W.,
Sec. 26, N½NW¼.
Containing 160 acres.

Boulder County has applied for both of these parcels to add to existing recreation areas. The first, called the Kossler Lake parcel is adjacent to Walker Ranch Park, and the second, the Lefthand Creek parcel, is adjacent to Buckingham Park. The land has been and will continue to be used for hiking and dispersed recreation. Any lease or patent issued will contain a stipulation to protect the water power resources. Patent provisions found at 43 CFR 2741.9 will also be included.

Publication of this classification notice segregates the land from the other public land laws, including mining laws, until patent issues or the classification is cancelled.

DATES: Comments my be submitted on this action on or before May 14, 1990.

ADDRESSES: Comments should be sent to the District Manager, Canon City District Office, P.O. Box 2200, Canon, City, Colorado 81215-2200, phone (719) 275-0631.

FOR FURTHER INFORMATION CONTACT: Priscilla McLain, Northeast Resource Area Office (303) 236-4399.

SUPPLEMENTARY INFORMATION: Comments will be evaluated by the District Manager, who may cancel or modify this realty action. In the absence of any action by the District Manager, this realty action will become final.

Roger W. Underwood,

Acting District Manager.

[FR Doc. 90-7172 Filed 3-28-90; 8:45 am]

BILLING CODE 4310-JB-M

[OR-943-00-4214-10; GPO-168; OR-45401]

Proposed Withdrawal and Opportunity for Public Meeting; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 493.60 acres of public land for protection of the New River Area of Critical Environmental Concern. This notice closes the land for up to 2 years from surface entry and mining. The land will remain open to mineral leasing.

DATES: Comments and requests for a public meeting must be received by June 27, 1990.

ADDRESSES: Comments and meeting requests should be sent to the Oregon State Director, BLM, P.O. Box 2965, Portland, Oregon 97208.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503-231-6905.

SUPPLEMENTARY INFORMATION: On March 19, 1990, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public land from settlement, sale, location, or entry under the general land laws,

including the mining laws, subject to valid existing rights:

Willamette Meridian

T. 30 S., R. 15 W.,
Sec. 3, lots 3 and 4;
Sec. 10, lots 1, 2, 3, 4, and SW¼SE¼;
Sec. 15, lots 1, 2, 3, 4, and NW¼NE¼;
Sec. 21, lot 2;
Sec. 22, lots 1, 2, and NW¼SW¼.

The area described contains 493.60 acres in Coos County, Oregon.

The purpose of the proposed withdrawal is to protect the New River Area of Critical Environmental Concern which is located adjacent to the Pacific Ocean approximately 30 miles south of the city of Coos Bay.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the State Director, Bureau of Land Management, at the address indicated above.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the State Director, Bureau of Land Management, at the address indicated above, within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or cancelled or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period are leases, licenses, permits, rights-of-way, and disposal of mineral or vegetative resources other than under the mining laws.

Dated: March 19, 1990.

Robert E. Mollohan,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 90-7175 Filed 3-28-90; 8:45 am]

BILLING CODE 4310-33-M

Fish and Wildlife Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Service's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Service Clearance Officer and the Office of Management and Budget, Paperwork Reduction Project (1018-0009), Washington, DC 20503, telephone 202-395-7340.

Title: Woodcock Wing Collection Envelope.

OMB Approval Number: 1018-0009.

Abstract: The Woodcock wing collection provides data on annual recruitment to woodcock populations, distribution and chronology of the woodcock harvest, and hunter success. Such data is used primarily by the Service to develop annual hunting regulations. This information is also used by the Service, State conservation agencies, university associates, and other interested parties for various research and management projects.

Service Form Number: 3-156A.

Frequency: Annually.

Description of Respondents: Individuals or households.

Estimated Completion Time: The reporting burden is estimated to be four mintues per response. 2,000 respondents average about 5 responses per hunting season.

Annual Responses: 10,000.

Annual Burden Hours: 670.

Service Clearance Officer: James E. Pinkerton, 703-358-1943 (Commercial); FTS 921-1943, Mail Stop 224 Arlington Square, U.S. Fish and Wildlife Service, Washington, DC 20240.

Dated: March 1, 1990.

Rollin D. Sparrowe,

Acting Assistant Director—Refuges and Wildlife.

[FR Doc. 90-7171 Filed 3-28-90; 8:45 am]

BILLING CODE 4310-55-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31550]

Corrected Notice of Exemption; Council Bluffs and Ottumwa Railway, Inc.—Lease, Operation, and Acquisition Exemption—Iowa Southern Railroad Co. and Ottumwa Terminal Railroad Co.

The Council Bluffs and Ottumwa Railway, Inc. (CBO), has filed a notice or exemption: [1] (1) To lease and operate (with an option to purchase) approximately 27 miles of rail line of Iowa Southern Railroad Company (IS) consisting of the former Norfolk and Western freight yard at Council Bluffs (5 miles) (milepost 407.8 to milepost 410.86), and the former Milwaukee Road terminal property at Council Bluffs (22 miles) (milepost 0.0 to milepost 0.3); and (2) to acquire and operate 4.3 miles of rail line owned and operated by Ottuwma Terminal Railroad Company (OT), consisting of the former Milwaukee Road city track and railroad property at Ottuwma, IA (4.3 miles) (milepost 0.0 to milepost 2.3).[2] Any comments must be filed with the Commission and served on: Roy N. Hollaway, Council Bluffs and Ottuwma Railway, Inc., 107 Fifth Street, Castle Rock, CO 80104.

CBO shall retain its interest in and take no steps to alter the historic integrity of all sites and structures on the lines that are 50 years old or older until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: March 23, 1990.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 90-7192 Filed 3-28-90; 8:45 am]

BILLING CODE 7035-01-M

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[1] This notice corrects the notice of exemption served November 9, 1989, by properly designating the mileposts for the Western Freight yard at Council Bluffs, IA.

[2] This transaction is part of a larger transaction in which National Railway System, Inc., a noncarrier, will control three carriers, CBO, Denver Railway, Inc., and Fore River Railway Company. *See* Finance Docket Nos. 31549 and 31551, being published simultaneously with this notice.

[Finance Docket No. 31549]

Corrected Notice of Exemption; National Railway System, Inc.—Control Exemption—Denver Railway, Inc., Council Bluffs and Ottumwa Railway, Inc., and Fore River Railway Co.

National Railway System, Inc. (NRS), a noncarrier, has filed a notice of exemption [1] under 49 CFR 1180.2(d)(2) for its control of Council Bluffs and Ottumwa Railway, Inc. (CBO), Denver Railway, Inc. (DR), and Fore River Railway Company, Inc. (FRR). CBO and DR have each filed separate notices of exemption in Finance Docket No. 31550, *Council Bluffs and Ottumwa Railway, Inc.—Lease, Operation, and Acquisition Exemption—Iowa Southern Railroad Company and Ottumwa Terminal Railroad Company*, and in Finance Docket No. 31551, *Denver Railway, Inc.—Acquisition and Operation Exemption—Denver Terminal Railroad Company*, respectively.

Under this proposal NRS will: (1) Purchase part of the railroad properties of Ottumwa Terminal Railroad Company, and lease for 5 years (with an option to purchase) the railroad properties of Iowa Southern Railroad Company, for CBO; (2) purchase the railroad properties of Denver Terminal Railroad Company for DR; and (3) purchase all of the capital stock of FRR from Evelyn Jane Flanders. CBO, DR, and FRR will operate as wholly owned subsidiaries of NRS. CBO will be comprised of the former Milwaukee Road track and railroad property at Ottumwa, IA (4.3 miles) (milepost 0.0 to milepost 2.3), the former Milwaukee Road terminal property (22 miles) (milepost 0.0 to milepost 0.3), and the Norfolk and Western freight yard (5 miles) (milepost 407.7 to milepost 410.86), both at Council Bluffs, IA. DR will be comprised of the former Denver Union Stockyards terminal railroad property (3.3 miles) (milepost 0.0 to milepost 0.8), and the former Rock Island line and terminal property (8 miles) (milepost 0.72 to milepost 3.95), at Denver, CO. FRR is a short line property, approximately 3 miles in length (milepost 0.0 to milepost 2.0), at Quincy, MA, which leases track, locomotives, and other property from Fore River Railroad Company, a subsidiary of Massachusetts Water Resources.

NRS indicates that the transaction: (1) Does not involve lines that connect; (2) is not part of a series of transactions that would connect the involved lines; and (2) does not involve a Class I carrier. Therefore, this transaction involves the control of nonconnecting carriers, and is exempt from the prior review requirements of 49 U.S.C. 11343. See 49 CFR 1180.2(d)(2).

As a condition to the use of this exemption, any employees affected by the transaction will be protected by the conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Commission and served on: Roy N. Hollaway, National Railway System, Inc., 107 Fifth Street, Castle Rock, CO 80104.

Decided: March 23, 1990.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 90-7191 Filed 3-28-90; 8:45 am]

BILLING CODE 7035-01-M

[1] This notice corrects the notice of exemption served November 9, 1989, by properly describing the rail properties of Council Bluffs and Ottumwa Railway, Inc.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 89-70]

Fredal Pharmacy; Grosse Pointe Farms, MI; Hearing

Notice is hereby given that on November 15, 1989, the Drug Enforcement Administration, Department of Justice, issued to Fredal Pharmacy an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Certificate of Registration, AF3294496, and deny any pending applications for renewal.

Thirty days have elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Tuesday, April 17, 1990, commencing at 10 a.m., at the United States Tax Court, Federal Building and Courthouse, 231 West Lafayette Street, room 1017, Detroit, Michigan.

Dated: March 19, 1990.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 90-7136 Filed 3-28-90; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 89-66]

Norman P. Welborn, M.D., Liberty, South Carolina; Hearing

Notice is hereby given that on November 15, 1989, the Drug Enforcement Administration, Department of Justice, issued to Norman P. Welborn, M.D., an Order to Show Cause as to why the Drug Enforcement Administration should not deny your application for a DEA Certificate of Registration.

Thirty days have elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Wednesday, April 11, 1990, commencing at 10 a.m., in the Hearing Room, Drug Enforcement Administration, 600 Army-Navy Drive, East Building, Arlington, Virginia.

Dated: March 19, 1990.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 90-7137 Filed 3-28-90; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Shipyard Employment Standards Advisory Committee; Meeting

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the Shipyard Employment Standards Advisory Committee, established under the provisions of the Federal Advisory Committee Act (FACA) as amended, 5 U.S.C. App. I, and section 7(b) of the Occupational Safety and Health Act, 29 U.S.C. 656(b), will convene on April 25, 1990 at 8:30 a.m., at the Radisson Hotel Hampton, 700 Settlers Landing Road, Hampton, Virginia 23669. Telephone: (804-727-9700). This meeting is open to the public. The meeting will adjourn on April 26, 1990, at approximately 4 p.m. The agenda is as follows:

I. Call to order.

II. Review the transcript of January 10-11, 1990 meeting.

III. Old Business. Discussion of the following standards:

(a) Working committee report to full committee on suggested revision to 29 CFR part 1915, subpart G, Material Handling.

adding §§ 1910.179, 1910.180, and ANSI B 30 Crane Standards.

(b) Working committee report to full committee on suggested revision to 29 CFR part 1915, subpart B, Explosive and Other Dangerous Atmospheres in Vessels and Vessel sections, proposed November 29, 1988, 53 FR 48092.

(c) 29 CFR part 1915, Subpart F, General Working Conditions, Lockout/Tagout Aboard Vessels and in the Shipyard.

IV. New Business. Discussion of the following standards, as time permits.

(a) 29 CFR part 1915, subpart P, Fire Protection.

(b) 29 CFR part 1915, subpart R, Commercial Diving, covering §§ 1915.231 to 1915.244.

(c) 29 CFR part 1915, subpart Z, Toxic and Hazardous Substances, § 1915.1001 Asbestos.

(d) 29 CFR part 1915, subpart C, General Safety and Health Provisions, § 1915.21, Access to Employee Exposure and Medical Records.

The Committee will consider oral presentations relating to agenda items. Persons wishing to address the Committee should submit a written request to Mr. Thomas Hall (address below) by the close of business, April 16, 1990. The request must include the name and address of the person wishing to appear, the capacity in which the appearance will be made, a short summary of the intended presentation and an estimate of the amount of time needed.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Hall, U.S. Department of Labor, Occupational Safety and Health Administration, Division of Consumer Affairs, room N-3647, 200 Constitution Avenue NW., Washington, DC 20210. (202) 523-8617.

Signed at Washington, DC, this 23rd day of March, 1990.

Gerard F. Scannell,

Assistant Secretary of Labor.

[FR Doc. 90-7143 Filed 3-28-90; 8:45 am]

BILLING CODE 4510-26-M

NATIONAL COMMISSION ON ACQUIRED IMMUNE DEFICIENCY SYNDROME

Meeting

AGENCY: National Commission on Acquired Immune Deficiency Syndrome.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463 as amended, the National Commission on Acquired Immune Deficiency Syndrome (AIDS) announces a series of site visits by the Commission.

DATES/TIME: April 16, 1990. April 17, 1990.

PLACE: Site visits to Macon and Waycross, Georgia.

FOR FURTHER INFORMATION CONTACT: Maureen Byrnes, Executive Director, The National Commission on Acquired Immune Deficiency Syndrome, 1730 K Street, NW., Suite 815, Washington, DC 20006 (202) 254-5125.

AGENDA: On April 16th and 17th, 1990, the National Commission on AIDS will make a series of site visits so as to gain a better understanding of the issues surrounding AIDS in rural communities.

Maureen Byrnes,

Executive Director.

[FR Doc. 90-7118 Filed 3-28-90; 8:45 am]

BILLING CODE 6820-CN-M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Archaeology; Closed Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Archaeology.

Date and Time: April 16 and 17, 1990, 9 a.m.-5 p.m.

Place: The Riviera Hotel, 2901 Las Vegas Boulevard, South, Las Vegas, Nevada 89109.

Type of Meeting: Closed.

Contact Person: Dr. John E. Yellen, Program Director Anthropology Program, room 320, National Science Foundation, Washington, DC 20550, telephone (202) 357-7804.

Minutes: May be obtained from contract person listed above.

Purpose of Meeting: To provide advice and recommendations concerning support for research in Archaeology.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of the Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

Dated: March 26, 1990.

[FR Doc. 90-7206 Filed 3-28-90; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for the Biophysics Program; Closed Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for the Biophysics Program.

Date and Time: April 16-17, 1990, from 8 a.m. to 6 p.m. each day.

Place: National Science Foundation, 1800 G Street NW., room 1242, Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Arthur Kowalsky, Program Director, Biophysics Program, room 325, phone: (202) 357-7777.

Minutes: May be obtained from Contact Person at the above address.

Purpose of Meeting: To provide advice and recommendations concerning support for research.

Agenda: To review and evaluate research proposals as part of the selection process for award.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552B(c), Government in the Sunshine Act.

Dated: March 26, 1990.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 90-7208 Filed 3-28-90; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Cell Biology Program; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Cell Biology Program.

Date & Time: April 18-20, 1990, 8:30 a.m. to 5 p.m.

Place: National Science Foundation, 1800 G Street NW., Washington, DC 20550.

Type of Meeting: Part Open—Closed 4/18—8:30 a.m. to 5 p.m.; open 4/19—12 p.m. to 1:30 p.m.; closed 4/20—8:30 a.m. to 5 p.m.

All other times the meeting is closed.

Contact Person: Dr. Maryanna P. Henkart, Program Director, Cell Biology Program, room 321, National Science Foundation, Washington, DC 20550.

Purpose of Advisory Panel: To provide advice and recommendations concerning support for research in Cell Biology.

Agenda: Open—General discussion of current status and future plans of the Cell Biology Program.

Closed—To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of U.S.C. 552b(c), Government in the Sunshine Act.

Dated: March 26, 1990.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 90-7207 Filed 3-28-90; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee for Chemistry; Open Meeting

In accordance with the Federal Advisory Committee Act, as amended, Public Law 463, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Chemistry.
Date and Time: April 19 and 20, 1990; 9 to 5 p.m.
Place: Room 540, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.
Type of Meeting: Open.
Contact Person: Dr. K.N. Houk, Director, Division of Chemistry, National Science Foundation, Washington, DC 20550, telephone (202) 357–7947.
Summary Minutes: May be obtained from Dr. K.N. Houk.
Purpose of Committee: To provide advice and recommendations concerning NSF support for research in chemistry.
Agenda: Open-Discussion of the current status and future plans of the Chemistry Division's activities.

Dated: March 26, 1990.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 90–7209 Filed 3–28–90; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Developmental Neuroscience; Closed Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Developmental Neuroscience.
Date and Time: April 18–20, 1990, 9 a.m.–5 p.m.
Place: National Science Foundation, 1800 G Street, NW., room 1243, Wshington, DC 20550.
Type of Meeting: Closed.
Contact Person: Dr. Mark Whitnall, Program Director, Developmental Neuroscience, room 320, National Science Foundation, Washington, DC 20550, telephone (202) 357–7042.
Minutes: May be obtained from contact person listed above.
Purpose of Meeting: To provide advice and recommendations concerning support for research in developmental neuroscience.
Agenda: To review and evaluate research proposals as part of the selection process for awards.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of the Government in the Sunshine Act.

Dated: March 26, 1990.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 90–7210 Filed 3–28–90; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Engineering and Technology Management; Closed Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Engineering & Technology Management.
Date/Time: April 18, 1990, 8 a.m. to 6 p.m.; April 19, 1990, 8 a.m. to 6 p.m.
Place: American Institute of Architecture (AIA), Board Room, 1735 New York Avenue, NW., Washington, DC 20006.
Type of Meeting: Closed.
Contact Person: Dr. Louis Martin-Vega, Program Director, Operations Research and Production Systems, National Science Foundation, 1800 G Street, NW., room 1128, Washington, DC 20550, telephone: 202/357–5167.
Purpose of Meeting: To provide advice and recommendations concerning research proposals submitted to announcement "Research Thrusts on Engineering Technology Management."
Agenda: To review and evaluate research proposals as part of the selection process for awards.
Reason for closing: The proposals reviewed contained information of a proprietary or confidential nature, including technical information, financial data (such as salaries), and personal information concerning individuals associated with the proposals. These matters are within the exemptions (4) and (6) of 5 U.S.C. 552b, Government in the Sunshine Act.

Dated: March 26, 1990.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 90–7211 Filed 3–28–90; 8:45 am]

BILLING CODE 7555-01-M

Meeting

Name: Task Force on Persons with Disabilities.
Place: National Science Foundation, 1800 G Street, NW., Washington, DC 20550.
Date: April 16, 1990.
Time/Room: 9 a.m.–5 p.m., room 1243.
Type of Meeting: Open.
Contact: Brenda M. Brush, Executive Secretary of the Task Force, National Science Foundation, room 546. Telephone Number: 202–357–5012; TDD: 357–9867.
Purpose of Meeting: To initiate discussion of science and engineering pipeline issues.
Minutes: May be obtained from the Executive Secretary at the above address.
Agenda: The following pipeline issues will be discussed: analysis of differences among the various types of disabilities as they impact progress through the pipeline; and a review of prior recommendations for National Science Foundation pipeline program modifications and additions. Additionally, the Task Force will plan subsequent activities.
Accommodation: If you plan to attend the meeting and require any kind of accommodation, please notify the Executive Secretary.

Dated: March 26, 1990.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 90–7212 Filed 3–28–90; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Political Science; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Political Science.
Date/time: April 19, 1990, 8:30 a.m. to 5 p.m.; April 20, 1990, 8:30 a.m. to 5 p.m.
Place: Room 523, National Science Foundation, 1800 G Street, NW., Washington DC 20550.
Type of meeting: Closed.
Contact person: Dr. Frank P. Scioli, Program Director, for Political Science, Division of Social and Economic Science, National Science Foundation, Washington, DC 20550, (202) 357–9406.
Purpose of Meeting: To provide advice and recommendations concerning support for research in political science.
Agenda: To review and evaluate research proposals as part of the selection process for awards.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 522b(c), Government in the Sunshine Act.

Dated: March 26, 1990.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 90–7213 Filed 3–28–90; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee for Scientific, Technological, and International Affairs; Meeting

The National Science Foundation announces the following meeting:

Date and Time: April 16—9 a.m. to 4:30 p.m.; April 17—9 a.m. to 2:30 p.m.
Place: Ramada Renaissance Hotel, Suite—New Hampshire 3, 1143 New Hampshire Avenue NW., Washington, DC 20037.
Type of Meeting: Open.
Contact Person: Ms. Jean E. Vanski, Directorate for Scientific, Technological, and International Affairs, National Science Foundation—room 538, 1800 G Street, NW., Washington, DC 20550, telephone Number: 202–357–7631.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: Inaugural meeting of the Directorate-wide Advisory Committee.

Agenda:

(1) Overview: STIA organizational structure, and programs. (April 16; 9–10:15)
(2) International Programs: Europe 1992, Eastern Europe, and the U.S.S.R. (April 16; 10:30–12)
(3) Science and Engineering Data and Policy: STIA programs; relationship to external communities; and international data program. (April 16; 1:15–4:30)
(4) Human Resource and Underrepresented Groups: STIA programs; role within NSF; future plans. (April 17; 9–12)
(5) Wrap-up: Overview of Committee recommendations; special administrative topics defining future Committee activities. (April 17; 1–2:30)

Dated: March 26, 1990.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 90–7214 Filed 3–28–90; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Social Psychology; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Social Psychology.

Date and Time: April 18–20, 1990, 9 a.m.–5 p.m.

Place: National Science Foundation, 1800 G. Street, NW., Room 1242, Washington, DC.

Type of Meeting: Part Open—Closed 4/18—9:00 a.m. to 10:00 a.m.; Open 4/18—10:00 a.m. to 12 Noon; Closed 4/18—1:00 a.m. to 5:00 p.m.; Closed 4/19—9:00 a.m. to 5:00 p.m.; Closed 4/20—9:00 p.m. to 5:00 p.m.

Contact Person: Dr. William D. Crano, Program Director, Social Psychology, Room 320, National Science Foundation, Washington DC 20050, telephone (202) 357–9485.

Minutes: May be obtained from contact person listed above.

Purpose of Meeting: To provide advice and recommendations concerning support for research in social psychology

Agenda: Open—To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being discussed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of the Government in the Sunshine Act.

Dated: March 26, 1990.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 90–7215 Filed 3–28–90; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–250 and 50–251]

[License Nos. DPR–31 and DPR–41]

Florida Power & Light Co.; Turkey Point Plant, Units 3 and 4; Issuance of Director's Decision

Notice is hereby given that the Director, Office of the Nuclear Reactor Regulation, has taken action with regard to Petitions filed pursuant to 10 CFR 2.206 by Mr. Thomas J. Saporito, Jr.

On December 21, 1988, Mr. Saporito (Petitioner) submitted a request pursuant to 10 CFR 2.206 that the NRC take certain actions with regard to the Turkey Point Plant, Units 3 and 4. This request was supplemented by five later submittals dated January 13 and 30, February 7, and April 25 and 26, 1989. On July 12, 1989, Partial Director's Decision DD–89–05 was issued which responded, in part, to the Petitioner's request for action. Subsequently, the Petitioner filed additional requests for action with regard to the Turkey Point facility dated July 7 and August 12, 1989. The current Director's Decision responds to the remaining issues from the December 21, 1988, Petition and to the subsequent requests for action in Petitions submitted by Mr. Saporito.

As discussed in Partial Director's Decision DD–89–05, two issues identified in the December 21, 1988, Petition required further investigation by the NRC staff. The two issues involved (1) a chilling effect on reporting safety concerns as a result of discrimination and harassment, and (2) the falsification and destruction of documents. This Petition requested that the operating licenses for Units 3 and 4 be immediately suspended and revoked, and that an escalated civil penalty be imposed on the licensee based upon these issues.

The July 7, 1989, Petition requested that the NRC take immediate actions to cause the suspension of Turkey Point operating licenses DPR–31 and DPR–41, cause the imposition of an escalated civil penalty upon the licensee, and cause an investigation into unlawful actions of the licensee. As a basis for these requests, the Petitioner alleged that reprisals and retaliatory measures were taken against employees at the Turkey Point facility after these employees voiced safety concerns to FPL management.

The August 12, 1989, Petition requested that the NRC investigate the violations of NRC requirements delineated in the Petition and take immediate actions to (1) cause the suspension of operating licenses DPR–31 and DPR–41; (2) cause the imposition of an escalated civil penalty upon the licensee; (3) cause a criminal investigation concerning the behavior and conduct of licensee's counsel; and (4) reverse the chilling effect at the Turkey Point facility resulting from the illegal licensee conduct. The Petition stated that the licensee has violated NRC regulation 10 CFR 50.7, "Employee Protection." In support of this statement, the Petitioner referred to particular examples at the Turkey Point facility whereby violation of this regulation allegedly occurred.

The Director of the Office of Nuclear Reactor Regulation has determined that the Petitions should be denied for the reasons explained in the "Director's Decision Under 10 CFR 2.206," (DD–90–01), which is available for public inspection in the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the Local Public Document Room at the Environmental and Urban Affairs Library, Florida International University, Miami, Florida.

A copy of the Director's Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206(c) of the Commission's regulations. As provided by this regulation, the decision will constitute the final action of the Commission 25 days after the date of issuance of the decision, unless the Commission, on its own motion, institutes review of the decision within that time period.

Dated at Rockville, Maryland, this 22nd day of March 1990.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 90–7199 Filed 3–28–90; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–400]

Carolina Power & Light Co.; Withdrawal of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted a request by Carolina Power & Light Company (the licensee) to witdraw its November 9, 1987 application for an amendment to Facility Operating License No. NPF–63 issued to the licensee for operation of the Shearon Harris Nuclear Power Plant, Unit No. 1, located in Wake County, North Carolina. Notice of Consideration of Issuance of Amendment to Facility

Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for a Hearing was published in the Federal Register on January 11, 1989 (54 FR 1020).

The purpose of the licensee's amendment request was to revise the Technical Specifications (TS) to 3.0.4, 4.0.3 and 4.0.4 and the Bases Sections 3.0 and 4.0.

Subsequently, the licensee informed the staff that the amendment is no longer requested. Thus, the amendment application is considred to be withdrawn by the licensee.

For further details with respect to this action, see (1) the application for amendment dated November 9, 1987, and (2) the staff's request for additional information dated July 13, 1989.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC and at the Local Public Document Room location at the Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Dated at Rockville, Maryland this 22nd day of March 1990.

For the Nuclear Regulatory Commission.

Richard A. Becker,

Project Manager, Project Directorate II-1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 90-7200 Filed 3-28-90; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-27840; File No. SR-NASD-90-16]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to NASD Assessments and Fees

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 22, 1990 the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change to section 2(d) of Schedule A of the By-Laws of the NASD increases the passthrough examination development fee imposed by the New York Stock Exchange ("Exchange" or "NYSE") from $10.00 to $40.00 for each individual who takes a Series 7 examination for registration as a general securities representative.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change to section 2(d) of Schedule A of the NASD's By-Laws increases the pass through examination development fee from $10.00 to $40.00 for each individual who takes a Series 7 examination for registration as a general securities representative. This development fee, if approved, will be imposed by the NYSE and merely collected by the NASD for payment to the Exchange. As such, the Exchange will independently seek the approval of the Commission for the increased fee, which it has represented as necessary to cover the increased examination development costs.

The NASD believes the proposed rule change is consistent with section 15A(b)(6) of the Act, which requires that the rules of the Association provide for the equitable allocation of reasonable fees and other charges among members and other persons using any facility or system which the Association operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change imposes any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by April 19, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: March 23, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-7228 Filed 3-28-90; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-25064]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

March 23, 1990.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by April 16, 1990 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Pennsylvania Electric Company (70-7576)

Pennsylvania Electric Company ("Penelec"), 1001 Broad Street, Johnstown, Pennsylvania 15907, an electric public-utility subsidiary company of General Public Utilities Corporation, a registered holding company, has filed a post-effective amendment to their application filed under section 6(b) of the Act and Rule 50(a)(5) thereunder.

By orders dated May 12, 1989 (HCAR No. 24889) and May 17, 1989 (HCAR No. 24892), the Commission, among other things, authorized Penelec to issue and sell from time-to-time through December 31, 1989 up to $100 million aggregate principal amount of medium-term securities and to pay fees and expenses in the estimated amount of $350,000 in connection therewith.

Penelec now requests authority to pay additional legal fees aggregating $64,360 in connection with the transactions heretofore authorized.

Ohio Power Company, et al. (70-7700)

Central Ohio Coal Company ("COCCo"), Southern Ohio Coal Company ("SOCCo") and Windsor Coal Company ("WCCo") (collectively, "Coal Companies"), all coal mining subsidiaries of Ohio Power Company ("Ohio Power"), an electric public utility subsidiary company of American Electric Power Company, Inc., a registered holding company, and Ohio Power, all located at 301 Cleveland Ave., SW., Canton, Ohio 44702, have filed a declaration under sections 6(a), 7 and 12(b) of the Act and Rule 45 thereunder.

The Coal Companies propose to execute guaranty and surety agreements whereby they would guarantee, through March 31, 1992, their respective portions of 5.92% for SOCCo, 2.15% for COCCo, and 0.97% for WCCo, of up to a $7.5 million loan which may be made pursuant to a Standby Credit Agreement by Mellon Bank (East) National Association ("Mellon") to the United Mine Workers of America 1974 Benefit Plan and Trust, neither of whom are affiliated with the Coal Companies. In addition, the Coal Companies propose to procure one or more irrevocable letters of credit in favor of Mellon in the amount of the loan that they propose to guarantee for the duration of such guaranty.

In connection with the letter(s) of credit, each of the Coal Companies will have an obligation, pursuant to a reimbursement agreement, to reimburse the bank issuing such letter of credit ("Issuing Bank") the amounts drawn on demand. In addition, each of the Coal Companies will have to pay certain fees to the Issuing Bank, the actual amount of which will be subject to negotiations between each Coal Company and the Issuing Bank. Such fees will be no greater than an origination fee of 0.5%, and a quarterly fee of 1.0% per annum, of the principal amount of the letter of credit. The letter of credit will bear interest at a rate no greater than 2.0% over the rate of interest announced from time to time by the Issuing Bank at its principal office as its prime or base commercial lending rate.

Additionally, Ohio Power requests authorization to provide its credit support in the amount of such reimbursement obligation.

The Narragansett Electric Company (70-7744)

The Narragansett Electric Company ("Narragansett"), 280 Melrose Street, Providence, Rhode Island 02901, a wholly owned electric public-utility subsidiary company of New England Electric System, a registered holding company, has filed an application-declaration pursuant to sections 6(a), 7, 9(a), 10 and 12(c) of the Act and Rules 42 and 50 thereunder.

Narragansett proposes to issue and sell, prior to December 31, 1991, one or more series of first mortgage bonds ("Bonds") in an aggregate principal amount of up to $65 million, under the competitive bidding requirements of Rule 50 or under the alternative bidding procedures set forth in the Commission's order dated September 2, 1982 (HCAR No. 22623). Narragansett may seek further Commission authorization to offer the Bonds through a negotiated sale through underwriters or a private placement with institutional investors under an exception from the competitive bidding requirements of Rule 50 under subsection (a)(5) thereunder. Narragansett proposes to use the proceeds derived from the sale of the Bonds to provide for up to $25 million of long-term financing of capital expenditures and to redeem, if market conditions warrant, any or all of its outstanding Series P Bonds, 10¼%, due 2016.

Narragansett further requests authorization to deviate from the Statement of Policy Regarding First Mortgage Bonds, as amended (HCAR Nos. 13105 and 16369, dated February 16, 1956 and May 8, 1969, respectively) with respect to the redemption and dividend restriction provisions associated with the Bonds.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-7229 Filed 3-28-90; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice 1181]

Public Information Collection Requirement Submitted to OMB for Review

AGENCY: Department of State.

ACTION: The Department of State has submitted the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511.

SUMMARY: The Nonimmigrant Visa Application is furnished to all aliens who express a desire to travel to the United States in nonimmigrant status.

The information provided on the form assists in identifying the applicant and in determining the applicant's eligibility for a nonimmigrant visa. The following summarizes the information collection proposal submitted to OMB:

Type of request: Reinstatement
Originating office: Bureau of Consular Affairs
Title of information collection: Nonimmigrant Visa Application
Form number: OF–156
Frequency: On occasion
Respondents: Aliens Applying for Nonimmigrant Visas
Estimated number of respondents: 10,000,000
Average hours per response: 20 minutes
Total estimated burden hours: 3,030,000

Section 3504(h) of Public Law 96–511 does not apply.

Additional information or comments: Copies of the proposed form and supporting documents may be obtained from Gail J. Cook (202) 647–3538. Comments and questions should be directed to (OMB) Marshall Mills (202) 395–7340.

Dated: March 14, 1990.

Sheldon J. Krys,

Assistant Secretary for Diplomatic Security.

[FR Doc. 90–7178 Filed 3–28–90; 8:45 am]

BILLING CODE 4710–06–M

Bureau of Politico-Military Affairs

[Public Notice 1179]

Name Change for the Office of Munitions Control

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The Office of Munitions Control has been renamed. Its new name is the Office of Defense Trade Controls.

FOR FURTHER INFORMATION CONTACT: Richard Levy or Michael Dixon, Deputy Directors, Office of Defense Trade Controls (703–875–6650).

SUPPLEMENTARY INFORMATION: On January 8, 1990, the Department of State changed the name of the Office of Munitions Control (OMC) to the."Office of Defense Trade Controls" (DTC). At the same time, a companion office, the Office of Defense Trade Policy (DTP), was created based on functions previously performed in the Bureau of Politico-Military Affairs by the Office of Strategic Technology Affairs. Together, DTC and DTP comprise the Center for Defense Trade (CDT) within the Bureau of Politico-Military Affairs.

The functions and responsibilities of DTC are identical to those previously carried out by OMC. The International Traffic in Arms Regulations will be amended shortly to reflect this change of designation.

Dated: March 12, 1990.

Charles A. Duelfer,

Director, Center for Defense Trade, Bureau of Politico-Military Affairs.

[FR Doc. 90–7179 Filed 3–28–90; 8:45 am]

BILLING CODE 4710–25–M

TENNESSEE VALLEY AUTHORITY

Paperwork Reduction Act; Information Collection Under Review by the Office of Management and Budget (OMB)

AGENCY: Tennessee Valley Authority.

ACTION: Information collection under review by the Office of Management and Budget (OMB).

SUMMARY: The Tennessee Valley Authority (TVA) has sent to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), as amended by Public Law 99–591.

Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Officer whose name, address, and telephone number appear below. Questions or comments should be directed to the Agency Clearance Officer and also to the Desk Officer for the Tennessee Valley Authority, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; Telephone: (202) 395–3084.

Agency Clearance Officer: Mark R. Winter, Tennessee Valley Authority, Edney Building 4W 13B, Chattanooga, TN 37402; (615) 751–2523.

Type of Request: Regular submission.
Title of Information Collection: Residential Energy Services Program—Commercial and Industrial Heat Pump Financing.
Frequency of Use: On occasion.
Type of Affected Public: State or local governments, farms, businesses or other for-profit, small businesses or organizations, Federal agencies or employees, non-profit institutions.
Small Businesses or Organizations Affected: Yes.
Federal Budget Functional Category Code: 271.
Estimated Number of Annual Responses: 1,250.
Estimated Total Annual Burden Hours: 937.5.
Estimated Average Burden Hours Per Response: .75.

Need For and Use of Information: The information is needed for distributors' evaluation and implementation of loans to their customers for the installation of electric heat pumps.

Louis S. Grande,

Vice President, Information Services, Senior Agency Official.

[FR Doc. 90–7177 Filed 3–28–90; 8:45 am]

BILLING CODE 8120–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. 90–03–EX–NO1]

Cantab Motors; Receipt of Petition for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 208

Cantab Motors of Round Hill, Va., has petitioned for a temporary exemption from the passive restraint requirements of Motor Vehicle Safety Standard No. 208 *Occupant Restraint Systems.* The basis of the petition is that compliance would cause the petitioner substantial economic hardship, and that the petitioner has, in good faith, attempted to meet the requirements of the standard.

The make and type of passenger car for which exemption was requested is the Morgan open car, or convertible. The British manufacturer of the Morgan has not offered its vehicle for sale in the United States since the early days of the Federal motor vehicle safety standards. In recent years, however, Cantab Motors has bought a small number of incomplete Morgan cars from the British manufacturer, and imported, assembled, and sold them in the United States. They differ from their British counterparts, not only in equipment items and modifications necessary for compliance with the Federal motor vehicle safety standards, but also in their engines, which are propane fueled. Cantab imports as motor vehicle equipment the individual components of the Morgan other than the engine, assembles them in the United States, adds the propane engine, and as the assembler of the vehicle, certifies its conformance to all applicable Federal safety and bumper standards. This has been a long-standing practice, and acceptable to NHTSA. In contrast to this is the practice of concern to NHTSA (see 54 FR 17775) in which all parts necessary to the vehicle, including its engine, are imported separately as motor vehicle equipment for subsequent assembly, in an attempt to avoid importation bond and NHTSA compliance procedures

applicable to fully assembled nonconforming motor vehicles. The vehicle assembled by Cantab in the U.S. is deemed sufficiently different from the one produced by Morgan in Britain that Cantab may be regarded as its manufacturer, not its converter, even though the brand names are the same.

Cantab assembled eight Morgans for sale in the U.S. in the 12-month period preceding the filing of its petition, and a total of 17 in the four years it has been in business. It argued that compliance with passive restraint requirements of Standard No. 208 would cause it substantial economic hardship, and that it had in good faith attempted to comply with the standard. It asked for a 3-year exemption from the requirements, during which time it would continue to provide protection through its current three-point lap-shoulder belt system. Petitioner had a net loss exceeding $34,000 in 1988, and a cumulative net loss exceeding $98,000 for its first three years.

Describing its good faith efforts to conform to the automatic restraint requirements, Cantab, finding that no current system utilized in an open car was adaptable to a Morgan, including the automatic restraint system in Alfa Romeo convertibles, decided to support and contribute to the feasibility study commissioned by Morgan Motor Company. This study, conducted by the Motor Industry Research Association (MIRA), concluded that the development costs of an airbag system were too high to be feasible. However, MIRA recommended an automatically deploying belt. The costs of development of this system are estimated in excess of 200,000 Pounds Sterling. Morgan and Cantab have entered into joint development of the system, which is represented as substantially close to completion. Petitioner estimates that such a system will be operational in cars it assembles within the 3-year period for which it seeks exemption, and it intends to amortize development costs over the 3-year period.

Over 91% of Cantab's revenue has been generated from new car sales. Therefore, a denial of the petition would force it to go out of business. The company argued that an exemption would be in the public interest and consistent with the objectives of the National Traffic and Motor Vehicle Safety Act, because its vehicles contribute to the alternative fuel industry. Continued availability of the Morgan, whose parent company has manufactured cars for 80 years, would help to maintain the existing diversity of motor vehicles in the United States. The small number of vehicles likely to be covered by the exemption, and the limited use that is made of them for pleasure rather than for commuting or long trips, would have an immaterial effect upon motor vehicle safety in Cantab's opinion.

Finally, the company submits that its petition is virtually identical to that of another U.S. assembler of Morgan cars, Isis Imports, which on October 26, 1989, was granted a 3-year exemption from the automatic restraint requirements of Standard No. 208 (54 FR 43647).

Interested persons are invited to submit comments on the petition of Cantab described above. Comments should refer to the docket number and be submitted to Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street SW., Washington, DC 20590. It is requested but not required that five copies be submitted.

All comments received before the close of business on the comment closing date indicated below will be considered. The petition and supporting materials, and all comments received, are available for examination in the docket both before and after the closing date. Comments received after the closing date will be considered to the extent practicable. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: April 30, 1990.

Authority: 15 U.S.C. 1410; delegations of authority at 49 CFR 1.50 and 501.8.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 90-7147 Filed 3-28-90; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 90-22]

E.W. Saybolt & Co., as a Commercial Gauger and Laboratory; Suspension of Customs Approval and Accreditation

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: Notice is hereby given that pursuant to § 151.13(k) of the Customs Regulations (19 CFR 151.13(k)), a written appeal against a proposal to revoke the commercial gauger and accredited laboratory approvals of E.W. Saybolt & Co., Inc., with prejudice, was filed with the Commissioner of Customs. The appeal has been considered and it has been decided to suspend the firm's commercial gauger and accredited laboratory approvals for a period of 60 days at the Customs District of Houston-Galveston. In addition, an amount of $300,000.00 has been accepted by the U.S. Customs Service in settlement of the Government's claim for monetary penalty for an alleged violation of 19 U.S.C. 1592.

With respect to the suspension of E.W. Saybolt & Co.'s commercial gauger and accredited laboratory approvals, the 60 day period specified above will commence on April 1, 1990 and end on May 30, 1990. It shall apply to the gauging and laboratory analysis of imported merchandise unladen within the Customs District of Houston/Galveston as specified in part 101 of the Customs Regulations [19 CFR part 101].

DATED: March 23, 1990.

FOR FURTHER INFORMATION CONTACT: Donald A. Cousins, Office of Laboratories and Scientific Services, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229 (202-566-2446).

Dated: March 23, 1990.

John B. O'Loughlin,

Director, Office of Laboratories and Scientific Services.

[FR Doc. 90-7159 Filed 3-28-90; 8:45 am]

BILLING CODE 4820-02-M

Deferral of Effective Date of Ruling Regarding Single Board Computers (Motherboards)

AGENCY: Customs Service, Treasury.

ACTION: General notice.

SUMMARY: A Customs Service ruling issued on July 2, 1987 (file No. 554581), held that "stuffed" single board computers (motherboards) were properly classifiable as data processing machines rather than as parts of data processing machines. Because of a special duty rate in effect between April 17-November 9, 1987 as to such machines imported from Japan, duty thereon was increased from 3.9 percent ad valorem to 100 percent ad valorem. Some importers, noting detrimental reliance on prior Customs treatment of the merchandise, requested a delay in the effective date of the ruling. Based on the documentation/information submitted by two importers, it was determined that implementation of the ruling, for those importers, should be delayed for a period of 90 days from the date when each importer received notice that motherboards should be entered as

unfinished data processing machines or the date of the subject ruling, whichever was earlier. This notice extends an opportunity to other importers, who can similarly show detrimental reliance on prior Customs treatment of their importation of motherboards, to obtain a delay in the implementation of the subject ruling on motherboards. A request for a similar delay will be available as to entries filed by other importers within 90 days of when each importer was first notified of the proper classification of motherboards or July 2, 1987, whichever is earlier, which remain unliquidated or, if liquidated, are within the protest period or are the subject of an open (unresolved) protest.

DATES: This notice is effective on March 29, 1990, and claims may be submitted pursuant thereto until June 27, 1990.

FOR FURTHER INFORMATION:

Legal Aspects: Arnold Sarasky, General Classification Branch, (202)–566–8181

Operational Aspects: David Ballard, Selectivity Programs Branch, (202)–535–4138.

SUPPLEMENTARY INFORMATION: Customs Ruling 554581 issued on July 2, 1987, held that stuffed printed circuit boards, meeting the criteria set forth in the ruling, which incorporate central processing units, were properly classifiable as data processing machines incorporating a calculating mechanism under item 676.15, Tariff Schedules of the United States (TSUS). It also held that the subject motherboards which did not incorporate a central processing unit and were not, in and of themselves, constituent units which functioned external to a main processor or processors, were classifiable as parts of automatic data processing machines and units therefore under items 676.52 or 676.54, TSUS. The ruling formalized Customs position which had previously been generally conveyed to importers in connection with pending entries.

Due to sanctions effective during the period April 17–November 9, 1987 as to data processing machines imported from Japan, the duty rate on single board computers went from 3.9 percent to 100 percent. Parts of data processing machines were free of duty.

Although there was no established and uniform practice for the classification of single board computers prior to the referenced ruling, some importers claimed that they had detrimentally relied on prior Customs treatment of such merchandise. The Department of the Treasury (Treasury) concluded, after review of the pertinent documents and information, that two importers acted reasonably and prudently in relying on Customs historic liquidation of motherboard entries for their respective accounts as parts of data processing machines. Therefore, applying the principles in § 177.9, Customs Regulations (19 CFR 177.9), as amended, 54 FR 31511 (July 31, 1989), Treasury granted a deferral to those importers in the implementation of the decision that motherboards were to be considered as unfinished data processing machines rather than parts thereof. Treasury also determined that it would be appropriate to extend this opportunity to other importers of motherboards. Thus, pursuant to this notice such importers will have an opportunity to establish that they also detrimentally relied on Customs historical treatment of motherboards as parts of data processing machines during the period from July 1985 through July 2, 1987.

Importers who can establish that they relied on Customs servicewide liquidations of motherboards entries under item 676.52 or 676.54, TSUS, as parts of data processing machines from July 1985 through July 2, 1987, may receive a delay of up to 90 days in the implementation of Customs Headquarters Ruling 554581. The deferral period for each importer, for whom deferral is approved, will commence on the date that the importer first received notice that the motherboards were classifiable as data processing machines under item 676.15, TSUS, or July 2, 1987, whichever is earlier. The deferral, if granted, will cover motherboards entered or released under immediate delivery procedures during the deferral period. It will only apply to entries of such motherboards which remain unliquidated, are within the 90 days protest period or are subject to any open (unresolved) protest.

The deferral request should specify the entries covered by the request, the date of each entry, the entry liquidation status, the date the importer first received written notice of the change in classification, and the quantity of merchandise involved in the request. The request should also include the same information as to the liquidated entries, other than those included in the above-noted list of entries, relied on by the importer in filing motherboard entries under the provisions for parts of data processing machines. The importer requesting such deferral should, in addition to the above information, supply the following documents to confirm reliance on prior Customs treatment:

1. Copies of forms and other communications they received from Customs relative to the entries noted in their request, e.g. CF28—Request for Information, CF29—Notice of Action.

2. An affidavit in the format set forth at the end of this document.

Importers should submit their requests to the district office having jurisdiction over the port where the entry was filed. If multiple Customs districts are involved in a claim, those districts must be identified in a consolidated request and each district must receive a complete copy of the request for comment and transmittal to Customs Headquarters. Concurrent with the submittal of that request, the importer should advise Customs Headquarters by submittal of a copy of the request or a letter summarizing its request, identifying the districts to which it was submitted and the date of submittal. The copy of the request or the letter should be annotated "Motherboard Delay Request" and should be sent to: United States Customs Service, Office of Regulations and Rulings, 1301 Constitution Ave., NW., room 2107, Washington, DC 20229.

Affidavit

State of _____

County of _____

Before me this day personally appeared _____, who, being duly sworn, deposes and says:

(1) That I am (TITLE) of (COMPANY) at (ADDRESS) and have been employed by (COMPANY) for (NUMBER OF) years.

(2) That I have personal knowledge of our product line of "motherboards" defined as "a card containing a microprocessor which is the mainboard used in a (COMPANY) personal computer."

(3) That I personally have identified and compiled a list of all part numbers which were described as, or were thought to be, our imports of motherboards during the period July 1985 through July 2, 1987.

(4) That I am familiar with Customs liquidation of entries of such motherboards.

(5) That I personally directed a search of our consumption entry data base for July 1985 through July 2, 1987 and identified all liquidated and unliquidated entries of such motherboards.

(6) That each of the entries of such motherboards, which are listed in Attachment 1, was liquidated by Customs under Item 676.52 or Item 676.54, Tariff Schedules of the United States, unless otherwise indicated.

(7) That each of the entries of such motherboards listed in Attachment 2 is unliquidated.

(8) That to the best of my knowledge and belief (COMPANY) first received written notification from Customs of its classification of such imports as unfinished data processing machines on or about (DATE). We understand that we are deemed to have received such notification no later than July 2, 1987.

_____

Affiant's Signature

Subscribed and sworn to before me this _____ day of _____, 1990.

Notary Public

(State)

My commission expires the _____ day of _____, 199____.

Michael H. Lane,

Acting Commissioner of Customs.

Approved: March 22, 1990.

Peter K. Nunez,

Assistant Secretary of the Treasury.

[FR Doc. 90-7158 Filed 3-28-90; 8:45 am]

BILLING CODE 4820-02-M

Fiscal Service

[Dept. Circ. 570, 1989; Rev., Supp. No. 17]

Surety Companies Acceptable on Federal Bonds; Termination of Authority of Progressive Mutual Insurance Co.

Notice is hereby given that the Certificate of Authority issued by the Treasury to Progressive Mutual Insurance Company under the United States Code, title 31, sections 9304 through 9308, to qualify as an acceptable surety on Federal bonds is terminated effective today.

The Company was last listed as an acceptable surety on Federal bonds at 54 FR 27820, June 30, 1989.

With respect to any bonds currently in force with Progressive Mutual Insurance Company, bond-approving officers for the Government may let such bonds run to expiration and need not secure new bonds. However, no new bonds should be accepted from the Company. In addition, bonds that are continuous in nature should not be renewed.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Finance Division, Surety Bond Branch, Washington, DC 20227, telephone (202) 287-3921.

Dated: March 23, 1990.

Mitchell A. Levine,

Assistant Commissioner, Comptroller, Financial Management Service.

[FR Doc. 90-7202 Filed 3-28-90; 8:45 am]

BILLING CODE 4810-35-M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 61
Thursday, March 29, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 55 F.R. 7866.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 a.m., Tuesday, March 27, 1990.

CHANGE IN THE MEETING: The Commission has postponed the open meeting until Thursday, April 5, 1990 to discuss the application submitted by the New York Cotton Exchange to trade Frozen Concentrated Orange Juice #2, broker associations—proposed rules, and a final statutory interpretation on Hybrid Instruments.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, Secretary of the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 90-7336 Filed 3-27-90; 1:23 pm]

BILLING CODE 6351-01-M

FEDERAL ELECTION COMMISSION

DATE & TIME: Tuesday, April 3, 1990, 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, April 5, 1990, 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC. (Ninth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Correction and Approval of Minutes
Status of Regulation Projects
Revised Final Rules Regarding Debt Settlements (11 CFR part 116)
Foreign National Rules: Announcement of Effective Date
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 376-3155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 90-7382 Filed 3-27-90; 2:32 pm]

BILLING CODE 6715-01-M

RESOLUTION TRUST CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Board of Directors of the Resolution Trust Corporation will meet in open session at 2:00 p.m. on Tuesday, March 27, 1990 to consider the following matter:

Summary Agenda:

No Cases

Discussion Agenda:

A. *Memorandum re*:
Policy on Payment of Post-Insolvency Interest for Direct Collateralized Borrowings

The meeting will be held in the Board Room of the FDIC Building located at 550-17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. John M. Buckley, Jr., Executive Secretary of the Resolution Trust Corporation, at (202) 898-3604.

Dated: March 26, 1990.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Executive Secretary.

[FR Doc. 90-7271 Filed 3-27-90; 3:10 am]

BILLING CODE 6714-01-M

Corrections

Federal Register
Vol. 55, No. 61
Thursday, March 29, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Parts 353 and 355

[Docket No. 91033-9233]

RIN 0625-AA32

Antidumping and Countervailing Duties

Correction

In rule document 90-5318 beginning on page 9046 in the issue of Friday, March 9, 1990, make the following correction:

On page 9046, in the first column, under **EFFECTIVE DATES**, in the second and third lines, "[insert date of publication in the **Federal Register**]" should read "March 9, 1990".

BILLING CODE 1505-01-D

COMMODITY FUTURES TRADING COMMISSION

Advisory; Disclosure Statement Related to Deferred Payment of Option Premiums for Options Traded on Certain Foreign Exchanges

Correction

In notice document 90-4386 beginning on page 6815 in the issue of Tuesday, February 27, 1990, make the following corrections:

1. On page 6815, in the second column, the agency name and the subject heading should have appeared as set forth above.

2. On page 6816, in the second column, in the sixth line, after "should" remove "not".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 85N-0061]

RIN 0905-AB67

Food Labeling; Health Messages and Label Statements; Reproposed Rule

Correction

In proposed rule document 90-3443 beginning on page 5176 in the issue of Tuesday, February 13, 1990, make the following correction:

On page 5187, in the first column, in the thirty-second line, after "maple syrup" insert "urine".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 500 and 589

[Docket No. 87N-0378]

Gentian Violet in Animal Feed; Gentian Violet for Use in Food Animals

Correction

In proposed rule document 90-3222 beginning on page 5194 in the issue of Tuesday, February 13, 1990, make the following correction:

On page 5203, in the first column, in the last line, "gential" should read "gentian".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 90N-0055]

Abbreviated New Drug Applications for Conjugated Estrogens; Proposal to Withdraw Approval; Opportunity for a Hearing

Correction

In notice document 90-3292 beginning on page 5074 in the issue of Tuesday, February 13, 1990, make the following corrections:

1. On page 5075, in the third column, in the last entry, "ANDA 85-084" should read "ANDA 86-084;".

2. On page 5078, in the second column, in the first line, "NADA's" should read "ANDA's".

BILLING CODE 1505-01-D

OVERSIGHT BOARD

12 CFR Part 1505

Employees Responsibilities and Conduct

Correction

In rule document 90-3428 beginning on page 5358 in the issue of Wednesday, February 14, 1990, make the following corrections:

§ 1505.19 [Corrected]

1. On page 5364, in the second column, in § 1505.19(b), in the second line, "such assets when the" should read "conservatorship or".

§ 1505.26 [Corrected]

2. On page 5365, in the third column, in § 1505.26, in the first line, "cover" should read "covered".

§ 1505.27 [Corrected]

3. On page 5306, in the 1st column, in § 1505.27(d). in the 14th line, "5 CFR" should read "see 5 CFR".

§ 1505.33 [Corrected]

4. On page 5367, in the 2nd column, in § 1505.33, in the 28th line, "ending" should read "pending".

5. On page 5368, in the third column, in § 1505.40(c)(3), in the third line, "insure" should read "insured".

BILLING CODE 1505-01-D

OVERSIGHT BOARD

12 CFR Part 1506

RESOLUTION TRUST CORPORATION

12 CFR Part 1606

RIN 3205-AA01

Qualification of, Ethical Standards of Conduct for, and Restrictions on the Use of Confidential Information by Independent Contractors

Correction

In rule document 90-3427 beginning on page 5346 in the issue of Wednesday, February 14, 1990, make the following corrections:

1. On page 5346, in the third column, under **GENERAL COMMENTS**, in the first paragraph, in the sixth line, "scope of" should read "scope or".

2. On the same page, in the same column, in the last line, insert a period after "funds".

3. On page 5347, in the 1st column, in the 2nd complete paragraph, in the 12th line, "certification" should read "certifications".

4. On the same page, in the same column, in the 3rd complete paragraph, in the 13th line, "certification," should read "certifications".

5. On the same page, in the second column, under **GENERAL CONCERNS**, in the second paragraph, in the ninth line, "certification" should read "certifications".

6. On page 5348, in the first column, in the last line, "Bu" should read "But".

7. On page 5349, in the first column, under **CONFLICTS OF INTEREST**", in the third paragraph, in the sixth line, "ROTC" should read "RTC".

8. On the same page, in the 2nd column, in the 12th line, "§§ xxxxxx.6," should read "§§ _____.6,"

9. On the same page, in the same column, under **Limitations on concurrent and subsequent activities**, in the third paragraph, in the second line, "_____.9a)(4)" should read "_____.9(a)(4)".

§ _____.4 [Corrected]

10. On page 5352, in the first column, in § _____.4(a)(1), in the third line, "felon;" should read "felony;".

11. On the same page, in the second column, in § _____.4(b)(2), in the third line, "certification" should read "certifications".

10. On the same page, in the third column, in § _____.4(b)(4), in the sixth line, "perform" should read "provide".

11. On the same page, in the same column, in § _____.4(c), in the third line, "any" should read "may".

§ _____.5 [Corrected]

12. On the same page, in the same column, the section heading that reads "§ 3.5 Disqualification of contractors." should read "§ _____.5 Disqualification of contractors.".

13. On the same page, in the same column, in § _____.5(a) introductory text, in the fourth line, "therby" should read "therefore".

§ _____.7 [Corrected]

14. On page 5353, in the third column, in § _____.7(g), in the fourth line, "employment" should read "employees".

§ _____.15 [Corrected]

15. On page 5355, in the 3rd column, in § _____.15(c), in the 3rd line, "paragraph" was misspelled; and in the 15th line, "under his" should read "under this".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-NM-10-AD; Amdt. 39-6523]

Airworthiness Directives; Boeing Model 757 Series Airplanes

Correction

In rule document 90-4940 beginning on page 7697 in the issue of Monday, March 5, 1990, make the following correction:

§ 39.13 [Corrected]

On page 7698, in § 39.13, in the second column, in the paragraph designated "B", in the third line, "747-" should read "757-".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. 25148; Amdt. 121-215]

RIN 2120-AC33

Anti-Drug Program for Personnel Engaged in Specified Aviation Activities

Correction

In rule document 90-6472 beginning on page 10756 in the issue of Thursday, March 22, 1990, make the following correction:

Appendix I to Part 121 [Corrected]

On page 10758, in the second column, in the paragraph designated "b", in the first line, "is" should read "as".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-NM-08-AD]

Airworthiness Directives: Sud-Service Caravelle SE 210 Models III and VIR Series Airplanes

Correction

In proposed rule document 90-4948 beginning on page 7732 in the issue of Monday, March 5, 1990, in the heading, the docket number should read as set forth above.

BILLING CODE 1505-01-D

federal register

Thursday
March 29, 1990

Part II

Environmental Protection Agency

40 CFR Part 261 et al.

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Toxicity Characteristics Revisions; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 261, 264, 265, 268, 271, and 302

[SWH-FRL-3601-1; EPA/OSW-FR-89-026]

RIN 2050-AA78

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Toxicity Characteristics Revisions

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On June 13, 1986, the Environmental Protection Agency (EPA) proposed to revise the existing toxicity characteristics, which are used to identify those wastes defined as hazardous and which are subject to regulation under subtitle C of the Resource Conservation and Recovery Act (RCRA) due to their potential to leach significant concentrations of specific toxic constituents. The proposed rule was designed to refine and broaden the scope of the hazardous waste regulatory program and to fulfill specific statutory mandates under the Hazardous and Solid Waste Amendments of 1984 (HSWA).

EPA is today promulgating the Toxicity Characteristics (TC). Today's rule retains many of the features of the original proposal: It replaces the Extraction Procedure (EP) leach test with the Toxicity Characteristic Leaching Procedure (TCLP); it adds 25 organic chemicals to the list of toxic constituents of concern; and it establishes regulatory levels for these organic chemicals based on health-based concentration thresholds and a dilution/attenuation factor that was developed using a subsurface fate and transport model. In response to comments received on the proposed rule and related notices, the final rule incorporates a number of modifications in the leaching procedure, the list of toxicants, the chronic toxicity reference levels, and the fate and transport model.

The overall effect of today's action will be to subject additional wastes to regulatory control under subtitle C of RCRA, thereby providing for further protection of human health and the environment.

DATES: Effective Date: September 25, 1990.

Compliance Dates: Large quantity generators: September 25, 1990. Small quantity generators (SQGs): March 29, 1991. Any person that would like to use the Toxicity Characteristic Leaching Procedure (TCLP) before the effective date may do so in order to determine whether the eight heavy metals and six pesticides that are currently regulated under the Extraction Procedure (EP) Toxicity Characteristic leach at levels of regulatory concern.

ADDRESSES: The official record for this rulemaking (Docket Number F-90-TCF-FFFFF) is located in the EPA RCRA Docket (Second Floor, Rm 2427), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The docket is open from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding federal holidays. The public must make an appointment to review docket materials by calling (202) 475-9327. The public may copy material at a cost of $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information about this rulemaking, contact the RCRA/Superfund Hotline at (800) 424-9346 (toll free) or (202) 382-3000 in the Washington, DC metropolitan area. For information on specific aspects of this rule, contact Steve Cochran, Office of Solid Waste (OS-332), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 475-8551.

SUPPLEMENTARY INFORMATION

Preamble Outline

I. Authority

The amendments to the hazardous waste regulations in 40 CFR parts 261 and 271 are being promulgated under the authority of sections 1006, 2002(a), 3001, 3002, and 3006 of the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, 6922, and 6926). The amendments to the list of hazardous substances and reportable quantities in 40 CFR part 302 are being promulgated under the authority of section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9602), as amended, and sections 311 and 501(a) of the Federal Water Pollution Control Act (33 U.S.C. 1321 and 1361).

II. Background

A. Definition of Hazardous Waste

Subtitle C of the Resource Conservation and Recovery Act (RCRA), as amended, establishes a federal program for the comprehensive regulation of hazardous waste. Section 1004(5) of RCRA defines hazardous waste, among other things, as solid waste that may ". . . pose a substantial present or potential hazard to human health and the environment when improperly treated, stored, transported, disposed, or otherwise managed." Under RCRA Section 3001, EPA is charged with defining which solid wastes are hazardous by either identifying the characteristics of hazardous waste or listing particular hazardous wastes. Identifying characteristics of hazardous waste and listing hazardous wastes are distinct and fundamentally different mechanisms for defining hazardous wastes.

The hazardous waste characteristics promulgated by EPA designate broad classes of wastes which are clearly hazardous by virtue of an inherent property. In the May 19, 1980 final rule (45 FR 33084) that instituted EPA's general framework for identifying hazardous waste, the Agency established two basic criteria for identifying hazardous waste characteristics: (1) The characteristic should be capable of being defined in terms of physical, chemical, or other properties which cause the waste to meet the statutory definition of hazardous waste; and (2) the properties defining the characteristic must be measurable by standardized and available testing protocols or reasonably detected by generators through their knowledge of the waste (40 CFR 261.10). In the May 19, 1980 final rule, EPA stated that it adopted the second criterion in recognition that the primary responsibility for determining whether wastes exhibit hazardous characteristics rests with generators, for whom standardization and availability of testing protocols are essential.

The approach EPA uses to establish hazardous waste characteristics is to determine which properties of a waste would result in harm to human health or the environment if a waste is mismanaged. The Agency then establishes test methods and regulatory levels for each characteristic property; solid waste that exceeds the regulatory level for any characteristic property is a hazardous waste.

The regulatory levels for characteristics that have been established provide a high degree of certainty that wastes exceeding those regulatory levels would pose hazards to human health and the environment if improperly managed and therefore require regulation under subtitle C. Wastes that do not exhibit hazardous waste characteristics are not necessarily nonhazardous. The Agency may

evaluate wastes from either specific or nonspecific sources and decide to list them as hazardous wastes based on criteria defined in 40 CFR 261.11.

To list a waste as hazardous, EPA conducts a detailed industry or process study involving literature reviews, engineering analyses, surveys and questionnaires, site visits, and waste sampling. For listing, the Agency places particular emphasis on hazardous constituents contained in specific wastes generated by the industry or process being studied (See 40 CFR 261.11(a)(3)). However, EPA uses a comparatively flexible approach when deciding to list wastes as hazardous; the approach includes consideration of factors such as type of threat posed, plausible ways that the waste might be mismanaged, migration potential and persistence in the environment, waste quantity, and actions of other regulatory programs. The Agency also promulgated two other rules for identifying solid wastes as hazardous wastes—the mixture and derived-from rules. The mixture rule says that any mixture of a listed hazardous waste and a solid waste is the listed hazardous waste (40 CFR 261.3(a)(2)(iii)–(iv)); the derived-from rule says that any solid waste derived from the treatment, storage, or disposal of a listed hazardous waste is considered the listed hazardous waste (40 CFR 261.3(c)–(d)).

B. Existing Extraction Procedure Toxicity Characteristic

The Extraction Procedure (EP) toxicity characteristic is one of four existing hazardous waste characteristics (along with ignitability, corrosivity, and reactivity) that EPA has identified and promulgated (40 CFR 261.24). The Extraction Procedure Toxicity Characteristic (EPTC) defines the toxicity of a waste by measuring the potential for the toxic constituents in the waste not subject to subtitle C controls to leach out and contaminate ground water at levels of health or environmental concern. To determine if a waste exhibits the EPTC, constituents are extracted in a procedure that simulates the leaching action that occurs in municipal landfills. Because a "hazardous waste" is defined as a waste that may pose a substantial hazard "when mismanaged," the EP was designed based on the assumption that wastes not subject to subtitle C controls would be co-disposed with municipal waste in an actively decomposing landfill that overlies an aquifer. Thus, the EP identifies wastes that are likely to leach hazardous concentrations of particular toxic constituents to ground water under conditions of improper management.

The Agency recognized that not all wastes are managed according to the mismanagement scenario postulated for the EP. However, it is necessary to make assumptions about management practices for unregulated wastes in order to determine whether a waste poses a threat to human health and the environment and thus meets the statutory definition of hazardous waste. In addition, the Agency believed that a reasonably conservative mismanagement scenario was warranted in light of the statutory mandate to protect human health and the environment.

Under the existing EPTC, the liquid waste extract obtained from the EP is analyzed to determine whether it possesses any of 14 toxic contaminants that were identified in the National Interim Primary Drinking Water Standards (NIPDWS): eight metals (arsenic, barium, cadmium, chromium, lead, mercury, selenium, and silver), four insecticides (endrin, lindane, methoxychlor, and toxaphene), and two herbicides (2,4–D and 2,4,5–TP). NIPDWS levels are used as health-based concentration limits. At the time of promulgation of the EPTC, the NIPDWS were the only available benchmarks for toxicity that were scientifically recognized and that also addressed chronic exposure.

The regulatory levels established for the EPTC were 100 times the NIPDWS. The 100-fold factor is a dilution and attenuation factor (DAF) that estimates the dilution and attenuation of the toxic constituents in a waste as they travel through the subsurface from the point of leachate generation (i.e., the landfill) to the point of human or environmental exposure (i.e., at a drinking-water well). The Agency had originally proposed a DAF of 10 for use in the EP. In light of the fact that there were few empirical data on which to base the DAF and other considerations, the Agency adopted a DAF of 100 in the final rule (45 FR 33084, May 19, 1980). EPA was confident that any waste which exhibited the EPTC using the 100-fold factor would have the potential to present a substantial hazard regardless of the actual site-specific attenuation mechanisms. The Agency also noted that it would adjust the DAF if future studies indicated that another DAF was more appropriate.

C. The Hazardous and Solid Waste Amendments of 1984

On November 8, 1984, the Hazardous and Solid Waste Amendments of 1984 (HSWA) were enacted: these amendments have had far-reaching ramifications for EPA's hazardous waste regulatory program. RCRA sections 3001 (g) and (h), which were among the many provisions added by HSWA, direct EPA to examine and revise the EP Toxicity Characteristic and to identify additional hazardous waste characteristics, including measures of toxicity. Today's rule fulfills these mandates by promulgating an improved leaching procedure that better predicts leaching and an expansion of the Toxicity Characteristics (TC) list to include additional toxicants.

RCRA section 3001(g) specifically directs EPA to examine the EP leach procedure as a predictor of the leaching potential of waste and to make changes necessary to ensure that it accurately predicts the leaching potential of wastes that may pose a threat to human health and the environment when mismanaged. The legislative history for this provision indicates that Congress was specifically concerned about the EP's ability to accurately represent the mobility of toxicants under a wide variety of conditions. The legislative history also suggests that Congress intended for EPA to develop a more aggressive leaching medium for the test and noted that the EP only evaluated the mobility of elemental toxicants and not the mobility of organic toxicants.

Concerned that some wastes posing a threat to human health and the environment were not being brought into the hazardous waste system, Congress adopted RCRA section 3001(h), which directs EPA to promulgate additional characteristics. Of specific concern to Congress was the fact that the existing characteristics did not identify wastes that were hazardous due to toxic levels of organic constituents. Although Congress recognized that the development of such a characteristic would entail technical problems, Congress urged the Agency to make reasonable assumptions for purposes of regulation, rather than await definitive technical answers. In response to the 3001(g) and 3001(h) mandates, EPA issued a proposed rule to revise and expand the TC (51 FR 21648, June 13, 1986) which is discussed below in Section II.D.

D. Previous Federal Register Notices

As indicated above, EPA published a **Federal Register** notice (June 13, 1986) proposing to expand the existing TC. The proposal specifically identified 52 compounds that could cause a waste to be hazardous via toxicity, including the existing 14 EPTC compounds and 38 additional organic compounds. In

addition, it described the Toxicity Characteristic Leaching Procedure (TCLP), a new version of the EP. The TCLP is designed to more accurately address the leaching of organic compounds and to improve upon technical aspects of the testing protocol.

The June 13 proposal used a subsurface fate and transport model to determine compound-specific dilution and attenuation factors (DAFs) as a basis for establishing the regulatory levels. (As mentioned above, the existing TC used a generic DAF of 100 which was not derived from modeling, but rather was an estimated factor indicating the potential for substantial hazard.) The extract from the second-generation extraction procedure, the TCLP, was analyzed for the presence of the 52 constituents at the proposed regulatory levels. In choosing the 38 new toxicants, the Agency identified those Appendix VIII constituents for which appropriate chronic toxicity reference levels were available and for which there existed adequate fate and transport data to establish a compound-specific DAF. (Appendix VIII of 40 CFR part 261 is the list of hazardous constituents that the Agency considers in evaluating the potential hazard posed by wastes; these constituents have been shown to have toxic, carcinogenic, mutagenic, or teratogenic effects.)

Chronic toxicity reference levels are those levels below which chronic exposure for individual toxicants in drinking water is considered safe or considered to pose minimal risk (in the case of carcinogens). The Agency decided to use, when possible, human health criteria and standards that have been proposed or promulgated for substances in particular media, because these have already received Agency and public review and evaluation. EPA proposed the continued use of the Drinking Water Standards (DWS) for the 14 existing EP toxicants and use of Recommended Maximum Contaminant Levels (RMCLs) for eight of the constituents being added to the TC list. For the remaining newly added constituents, EPA proposed to establish chronic toxicity reference levels using Reference Doses (RfDs) for non-carcinogens and Risk-Specific Doses (RSDs) for carcinogens.

The RfD is an estimate of the daily dose of a substance that will result in no adverse effect even after a lifetime of exposure to the substance at that dose. In order to account for toxicant exposure from sources other than water (i.e., air and food), the Agency proposed to apportion the RfD based on proportionate compound-specific exposure routes, as is done in developing drinking water standards.

The RSD is the daily dose of a carcinogen over a lifetime that will result in an incidence of cancer equal to a specific risk level. EPA proposed a weight-of-evidence approach, which involves categorizing carcinogens according to the quality and adequacy of the supporting toxicological studies, to establish the risk levels most appropriate for setting chronic toxicity reference levels for carcinogens.

The Agency proposed using a subsurface fate and transport model to calculate constituent-specific DAFs. This model incorporated compound-specific hydrolysis and soil adsorption data, coupled with parameters describing an underground environment (e.g., ground water flow rate, soil porosity, ground water pH). Values for parameters were selected based on review of geological conditions at existing landfills. Since the model was specifically developed to simulate transport of organics and a model for inorganics could not be completed in time for the June 13 proposal, EPA proposed to retain the existing EP levels for the eight inorganic toxicants.

The proposed rule introduced the TCLP as a second-generation leaching procedure to replace the existing EP. The main impetus behind the development of the TCLP was the need to address the leaching of organic compounds. However, the Agency also recognized that the EP protocol could be improved in certain ways. The TCLP was described in detail as a proposed revision to Appendix II of part 261. Further supporting information on the TCLP was provided through notices of availability of reports on July 9, 1986 (51 FR 24856) and September 19, 1986 (51 FR 33297). After the TC proposal, the Land Disposal Restrictions final rule (51 FR 40572, November 7, 1986) promulgated the TCLP for monitoring compliance with treatment standards for certain spent solvent wastes and dioxin-contaminated wastes. See Section II.E below for further discussion of these notices.

E. Other Notices Relating to the Proposal

Today's rule is based on three fundamental analytic components that were set forth in the original June 13 proposal: a set of chronic toxicity reference levels, a subsurface fate and transport model, and the TCLP. In addition to the June 13, 1986 proposed rule described in the preceding section of this preamble, EPA has published several other notices in the Federal Register dealing with these three components. These notices are listed in Table II.1 and are summarized in this section. A more detailed discussion is presented on several of these notices in other sections of this preamble, as identified in Table II.1.

TABLE II.1—RELATED FEDERAL REGISTER NOTICES DISCUSSING ONE OR MORE OF THE ANALYTICAL COMPONENTS OF THE REVISED TC

Federal Register Notice	Analytic Component			Relevant preamble section of today's rule
	CTRLs [1]	Model [2]	TCLP [3]	
Jan. 14, 1986, 51 FR 1602 (Proposed LDR framework)		X	X	III.E, III.I
Nov. 7, 1986, 51 FR 40572 (Final LDR approach)			X	III.F
May 18, 1987, 52 FR 18583 (Consideration of separate wastewater TC)		X	X	III.A, III.H
May 19, 1988, 53 FR 18024 (CTRLs updated, two-tiered DAF alternative proposed).	X	X		III.C, III.D
May 24, 1988, 53 FR 18792 (Proposal to replace particle reduction)			X	III.F
Aug. 1, 1988, 53 FR 28892 (Proposed modifications to ground water model).		X		III.E

[1] Chronic Toxicity Reference Levels.
[2] Ground water fate and transport model.
[3] Toxicity Characteristic Leaching Procedure.

EPA's first discussion of the development of regulatory levels through the use of chronic toxicity reference levels in combination with a subsurface fate and transport model was in the proposed rule governing land disposal restrictions for solvents and dioxins (51 FR 1602, January 14, 1986). This proposal introduced the concept involved in "back-calculating" regulatory levels (i.e., multiplying chronic toxicity reference levels by dilution/ attenuation factors) and also discussed the Agency's plan for revising the EP. In the final rule on land disposal restrictions for solvents and dioxins (51 FR 40572, November 7, 1986), EPA decided not to use the "back-calculation approach" for the LDR program in favor of an engineering determination based on the best demonstrated available technology (BDAT). However, the Agency did promulgate the revised TCLP as the leaching procedure to be used in the land disposal restrictions program. Specifically, the TCLP is used to demonstrate that certain wastes meet the best demonstrated available technology standards.

On May 18, 1987, EPA published a Supplemental Notice of Proposed Rulemaking (52 FR 18583) in response to numerous comments on the June 1986 proposal concerning the application of the revised TC to wastewaters. The commenters' main concern was that it may be inappropriate to apply the TC mismanagement scenario (co-disposal of wastes with municipal wastes in an unlined landfill) to wastewaters managed in surface impoundments. The commenters believe that such an approach would result in inappropriately low regulatory levels. The Supplemental Notice outlined several alternatives for the application of the TC to wastewaters that would result in a separate set of regulatory levels for these wastes. The alternative scenario for wastewaters assumed that subject wastes are managed in an unlined impoundment instead of being co-disposed in a municipal landfill. Sections III.A.2, III.E., and III.H provide further discussion of the Supplemental Notice for wastewaters and related issues.

The Agency then published a Notice of Data Availability and Request for Comments on May 19, 1988 (53 FR 18024), as a result of its concern about uncertainties and technical difficulties involved with developing sufficiently representative dilution/attenuation factors (DAFs) for specific constituents. In that notice, the Agency proposed an alternative to the constituent-specific DAFs in the proposed TC. The Agency presented a two-phased approach to implementing DAFs for the TC. In the first phase, the Agency would use generic DAFs for all 38 new TC organic constituents while the development of constituent-specific DAFs proceeded; once the development of the constituent-specific DAFs was completed, these DAFs would be implemented in the second phase. The Agency specifically requested comment on the use of a generic DAF that would initially bring into the hazardous waste regulatory system the most toxic of the wastes subject to the June 1986 proposal. The Agency also updated the chronic toxicity reference levels for a number of constituents based on newly available information. Section III.C discusses the incorporation of the new information into the chronic toxicity reference levels for specific constituents and Section III.D describes in more detail the two-tiered DAF approach.

In response to numerous comments expressing concern as to whether the particle reduction requirement in the TCLP was appropriate, EPA published a proposal (53 FR 18792, May 24, 1988) requesting comment on modifications to the TCLP as promulgated on November 7, 1986. Based on further experimental evaluation of the original testing methodology, the Agency proposed to modify the TCLP to include a cage insert requirement in place of the particle reduction step for certain materials. The specific revisions discussed in the proposal are presented in detail in section III.F of this preamble, and the TCLP protocol is presented in Section VIII of today's final rule. Today's rule does not include a cage requirement, but rather retains the particle reduction step for monolithic or fixated wastes.

In addition to the above-mentioned modifications, on August 1, 1988, the Agency published a Supplemental Notice (53 FR 28892) introducing potential modifications to the subsurface fate and transport model used to calculate constituent-specific DAFs in the proposed TC. In addition, the Agency presented currently available hydrogeological data on municipal waste landfills and proposed to modify the subsurface fate and transport model to more accurately reflect conditions in the universe of municipal waste landfills. Section III.E presents a more detailed description of the subsurface fate and transport model and the modifications made during its development.

F. Pollution Prevention

In section 1003(b) of RCRA, Congress declared waste minimization to be a national policy. Similarly, EPA has made pollution prevention an Agency objective, in both regulatory and nonregulatory programs. (See EPA's policy statement emphasizing the importance of pollution prevention (54 FR 3845, January 26, 1989).) This policy places highest priority on source reduction (i.e., reducing the volume or toxicity of wastes generated) and use of all pollutants for all sectors of society. A reduction in the amount of waste which must be managed (i.e., by source reduction and recycling) provides direct benefits related to protecting human health and the environment from the mismanagement of hazardous wastes. Pollution prevention measures can also reduce waste treatment and disposal costs, decrease costs for raw materials, minimize liability and regulatory burdens for waste generators, and may enhance efficiency, product quality, and public image. The Agency encourages industries affected by this rule to consider achieving compliance through pollution prevention.

The Agency has taken several steps to create pollution prevention incentives. First, EPA is developing institutional structures within each of its offices to ensure that the pollution prevention philosophy is incorporated into every feasible aspect of internal EPA planning and decision-making. Second, EPA is making technical information available to help firms reduce waste generation. EPA is developing the Pollution Prevention Information Clearinghouse (PPIC), a network of people and resources throughout the United States that have direct experience in many industries. PPIC includes the Electronic Information Exchange System (EIES), and a database of bulletins, programs, contacts, and reports related to pollution prevention. Third, the Agency is supporting the development of state programs to assist generators in their waste reduction efforts. Many states are already providing such help. For example, the Alaska Health Project has published technical assistance packets for specific industries; North Carolina has a pollution prevention bibliography; and Oregon conducts a hazardous waste reduction program. Finally, EPA has initiated specific regulatory requirements addressing waste minimization. Under the Resource Conservation and Recovery Act (RCRA) regulations, hazardous waste generators are required to certify on their hazardous waste manifests and annual permit reports that they have a program in place to reduce the volume or quantity and toxicity of their hazardous wastes as much as economically practical. RCRA regulations also require

generators to describe on their RCRA biennial reports the efforts they have undertaken during the year to reduce the volume and toxicity of their hazardous waste and to compare these efforts to previous years.

As important as the efforts just described is the Agency's commitment to ensuring that regulations under development encourage pollution prevention, whenever possible. The TC (TC), we believe, provides significant incentives for pollution prevention. Currently, there is little incentive for industries to implement pollution prevention efforts for unregulated solid wastes. In particular, there are few controls on units handling solid wastes that have the potential for releases of hazardous constituents to groundwater. Large quantities of solid wastes containing TC constituents currently are managed in unregulated land-based units, such as surface impoundments and landfills. Many of these units are in states that are either highly dependent on groundwater for public water supply or where groundwater is hydraulically connected to surface water, or both. By subjecting management of TC wastes to subtitle C regulation, EPA is in effect requiring that waste managers rethink their practices for solid wastes that contain hazardous constituents. EPA's experience has been that hazardous waste regulations provide significant incentives for pollution prevention. For example, some listed wastestreams (e.g., bottoms from tetrachloroethylene production) are now completely recycled.

The characteristic mechanism used by EPA to identify hazardous waste is especially effective in encouraging pollution prevention because it sets a concentration level or criteria (e.g. test) that determines the point at which the waste is no longer regulated as characteristically hazardous. Because of the high cost of compliance with RCRA subtitle C requirements, members of the regulated community will have significant new incentives to reduce TC waste generation as a result of today's rule. Industries will consider substitutes for the specific chemicals on the TC list of toxicants of concern. Where substitutes are not used, there will be incentive to reduce the use of hazardous substances or otherwise limit their concentrations in wastes, in order to keep concentrations of hazardous chemicals below regulatory levels.

Pollution prevention options range from simple good housekeeping practices, e.g., keeping solvents and oils separate to facilitate recycling of each, to more extensive process reconfigurations and/or raw material substitutions. Even in cases where pollution prevention can not eliminate the need for treatment or disposal of hazardous wastes, it may reduce the generation of waste. For example, tank capacity is constrained by land area, engineering considerations, and cost. Managers of TC wastewaters that switch from surface impoundments to exempt tanks will almost certainly have to reduce volumes of hazardous waste generated, or segregate hazardous portions of their wastestreams.

In order to enhance the pollution preventions effects of this rule, EPA is incorporating pollution prevention into the communication strategy for the TC regulation. EPA will provide information targeted to small businesses specifically and industry in general through pamphlets, industry publications and conferences, on the mechanisms described above. We have found that many small businesses are turning to pollution prevention as a result of implementation of the small quantity generator regulations (see 51 FR 10146, March 24, 1986). For example, PPIC documents relate how one drycleaning operation reduced its solvent wastes to a level well below national industry standards by regularly checking for and sealing any system leaks, and installing a conditioning system and a carbon adsorption unit to recover additional solvent. With the new setup, the plant can clean four times as many clothes per drum of solvent. The Agency believes that other industries may have the potential to substitute less toxic source materials in their processes. EPA will consider whether any technical assistance could aid industry in these efforts. EPA would also be interested in suggestions from industries affected by the TC in ways that the Agency might facilitate these efforts. Inquiries should be directed to the Pollution Prevention Office, U.S. EPA, Washington, DC 20460.

In summary, the TC will alter the management of wastes that contain toxicant at hazardous levels by ending management in unregulated land-based units. As industries reassess their waste generation and management practices, many are likely to seriously consider pollution prevention options, and EPA will take steps to facilitate such efforts.

G. Summary of Final Rule

Today's rule retains many of the features of the June 1986 proposal: it replaces the EP with the TCLP; it adds 25 new organic constituents to the list of toxic constituents of concern; and it establishes regulatory levels for the organic constituents based on health-based concentration limits and a DAF developed using the subsurface fate and transport model. In response to comments received on the proposed rule and related notices, the final rule incorporates a number of modifications to the list of constituents, the leaching procedure, the chronic toxicity reference levels, the subsurface fate and transport model, and the schedule for compliance with the TC rule.

With respect to the list of constituents, the final rule includes 25 of the 38 constituents proposed in 1986. One group that has been excluded in the final rule are constituents that appreciably hydrolyze. EPA has been able to develop scientifically valid DAFs for nondegrading constituents but is still improving its approach for developing DAFs for constituents that are expected to hydrolyze appreciably during transport. In particular, the Agency does not yet have a procedure to address toxic hydrolysis byproducts that may be formed.

Second, in response to comments, the Agency has also evaluated the applicability of the steady-state condition assumed in the subsurface fate and transport model, and has determined that the assumption is valid for most of the originally proposed constituents. However, several of the original proposed constituents have been deferred from the final rule while the Agency continues to evaluate the extent to which the steady-state solution is appropriate in determining their fate and transport.

As a result, all the constituents newly regulated under today's rule are nonhydrolyzing or minimally hydrolyzing constituents, and all are constituents for which the steady-state solution is appropriate. For all these constituents, EPA has determined, based on the results of its subsurface fate and transport model, that use of a DAF of 100 is appropriate for setting regulatory levels. This DAF is sufficient to capture only those wastes that are clearly hazardous. As a result of the Agency's decision to regulate only nonhydrolyzing or minimally hydrolyzing constituents and those for which the steady-state solution is appropriate, 25 additional constituents are being regulated rather than the originally proposed 38. Regulatory levels for hydrolyzing constituents, as well as those constituents for which there remain questions as to whether the steady-state solution is appropriate, will be discussed in future notices.

The list of constituents regulated in today's rule and their respective regulatory levels are presented in Table II.2. As in the proposed rule, where the

calculated regulatory level (i.e., the chronic toxicity reference level multiplied by the DAF) is below the analytical quantitation limit, the quantitation limit is the final regulatory level. Note that the list of constituents in Table II.2 contains the 14 constituents currently regulated under the existing EPTC. As specified in today's rule, these constituents will continue to be regulated at their current levels.

TABLE II.2.—TOXICITY CHARACTERISTIC CONSTITUENTS AND REGULATORY LEVELS

EPA HW No.[1]	Constituent (mg/L)	CAS No.[2]	Chronic toxicity reference level (mg/L)	Regulatory level (mg/L)
D004	Arsenic	7440-38-2	0.05	5.0
D005	Barium	7440-39-3	1.0	100.0
D018	Benzene	71-43-2	0.005	0.5
D006	Cadmium	7440-43-9	0.01	1.0
D019	Carbon tetrachloride	56-23-5	0.005	0.5
D020	Chlordane	57-74-9	0.0003	0.03
D021	Chlorobenzene	108-90-7	1	100.0
D022	Chloroform	67-66-3	0.06	6.0
D007	Chromium	7440-47-3	0.05	5.0
D023	o-Cresol	95-48-7	2	[4] 200.0
D024	m-Cresol	108-39-4	2	[4] 200.0
D025	p-Cresol	106-44-5	2	[4] 200.0
D026	Cresol		2	[4] 200.0
D016	2,4-D	94-75-7	0.1	10.0
D027	1,4-Dichlorobenzene	106-46-7	0.075	7.5
D028	1,2-Dichloroethane	107-06-2	0.005	0.5
D029	1,1-Dichloroethylene	75-35-4	0.007	0.7
D030	2,4-Dinitrotoluene	121-14-2	0.0005	[3] 0.13
D012	Endrin	72-20-8	0.0002	0.02
D031	Heptachlor (and its hydroxide)	76-44-8	0.00008	0.008
D032	Hexachlorobenzene	118-74-1	0.0002	[3] 0.13
D033	Hexachloro-1,3-butadiene	87-68-3	0.005	0.5
D034	Hexachloroethane	67-72-1	0.03	3.0
D008	Lead	7439-92-1	0.05	5.0
D013	Lindane	58-89-9	0.004	0.4
D009	Mercury	7439-97-6	0.002	0.2
D014	Methoxychlor	72-43-5	0.1	10.0
D035	Methyl ethyl ketone	78-93-3	2	200.0
D036	Nitrobenzene	98-95-3	0.02	2.0
D037	Pentachlorophenol	87-86-5	1	100.0
D038	Pyridine	110-86-1	0.04	[3] 5.0
D010	Selenium	7782-49 2	0.01	1.0
D011	Silver	7440-22-4	0.05	5.0
D039	Tetrachloroethylene	127-18-4	0.007	0.7
D015	Toxaphene	8001-35-2	0.005	0.5
D040	Trichloroethylene	79-01-6	0.005	0.5
D041	2,4,5-Trichlorophenol	95-95-4	4	400.0
D042	2,4,6-Trichlorophenol	88-06-2	0.02	2.0
D017	2,4,5-TP (Silvex)	93-72-1	0.01	1.0
D043	Vinyl chloride	75-01-4	0.002	0.2

[1] Hazardous waste number.
[2] Chemical abstracts service number.
[3] Quantitation limit is greater than the calculated regulatory level. The quantitation limit therefore becomes the regulatory level.
[4] If o-, m-, and p-cresol concentrations cannot be differentiated, the total cresol (D026) concentration is used. The regulatory level for total cresol is 200 mg/l.

The regulatory levels reflect modifications to some chronic toxicity reference levels since the original proposal. EPA has revised some of the Maximum Contaminant Levels, Risk-Specific Doses, and Reference Doses to reflect new data and better methods. In response to comments received, EPA has decided not to apportion reference doses of noncarcinogens to account for multiple routes of exposure, as was originally proposed (51 FR 21648). See section III.C for further discussion of comments on apportionment and the Agency's reasons for not including apportionment of reference doses in the final rule. Today's rule also promulgates the TCLP to replace the EP. The TCLP represents an improvement over the EP in that it more accurately addresses leaching potential for use in evaluating wastes containing organic constituents, and also corrects several minor technical deficiencies in the original EP. The version of the TCLP promulgated today reflects additional improvements and modifications made to the TCLP since the original proposal. The TCLP promulgated today will also replace the earlier version of the TCLP promulgated as part of the land disposal restrictions program.

Today's rule incorporates a schedule for compliance that classifies the universe of potentially affected TC waste handlers into two groups: (1) All generators of greater than 100 kg/month and less than 1,000 kg/month of hazardous waste (small-quantity generators) must come into compliance with the subtitle C requirements for management of their TC waste within 1 year; and (2) all generators of 1,000 kg/month or more of hazardous waste are required to comply with all subtitle C requirements for TC wastes within 6 months. The phased schedule for compliance is further discussed in section V.

Wastes identified as hazardous under the Toxicity Characteristic will also become hazardous substances under section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. Today's rule amends the list of reportable quantities (RQs) in 40 CFR part 302 by adding appropriate values for each of the new 25 TC toxicants. All of the newly-

designated TC toxicants are already listed as CERCLA hazardous substances. The RQs being promulgated are the same as those that already apply to all materials containing these hazardous substances.

Today's rule defers applicability of the TC to one type of waste and exempts another. First, the Agency is deferring the applicability of the TC to petroleum-contaminated media and debris at sites subject to the RCRA Underground Storage Tank (UST) cleanup regulations under part 280. (See section III.I.6.) Second, EPA has decided to exempt from today's rule certain polychlorinated biphenyl (PCB) wastes that are fully regulated under the Toxic Substances and Control Act (TSCA) and would be identified as hazardous because of today's rule (See section III.J.7.).

In portions of the existing codified waste regulation of title 40, chapter I, parts 261 through 265, the EPTC is named. Today's action of promulgating the TC necessitates amendment of these references to the EPTC. This amendment which replaces references to the EPTC with the words "Toxicity Characteristic" applies to the following sections of 40 CFR: 261.4(b)(6)(i) not (A)(B)(C); 261.4(b)(9), 264.301(e)(1), 265.221(d)(1) and 265.273(a).

In §§ 264.301(e)(1) and 265.221(d)(1), in addition to amending reference to the EPTC, the universe of constituents remains the same as the EPTC. To accomplish this, the constituents D004–D017, the EPTC constituents, are specifically named as those constituents which would not render the waste hazardous by the TC.

As discussed below, the Agency will continue to refine the TC in order to provide greater accuracy and comprehensiveness in identifying hazardous waste based on the waste's toxic constituents. However, the Agency believes that today's rule fulfills the statutory mandates under sections 3001(g) and 3001(h).

III. Response to Major Comments and Analysis of Issues

The Agency received many comments on the June 13, 1986 proposed rule and in response to subsequent notices. The Agency has carefully considered all comments in the preparation of this final rule. To facilitate the evaluation and response to comments, the Agency grouped the comments into ten categories. The categories are as follows:

A. General Approach
B. Constituents of Concern
C. Chronic Toxicity Reference Levels
D. Use of Generic DAFs
E. Application of a Subsurface Fate and Transport Model
F. The TCLP
G. Testing and Recordkeeping Requirements
H. Applicability to Wastes Managed in Surface Impoundments
I. Relationship to Other RCRA Regulations
J. Relationship to Other Regulatory Authorities

In this preamble, the Agency provides summaries of and responses to major comments. Readers are invited to refer to background documents (Refs. 1, 2, 3, and 4) for complete summaries and responses to all comments.

A. General Approach

1. Expanded Use of Hazardous Waste Characteristics.

The TC revisions specified in today's rule refine and expand the EPTC. Most commenters stated that increased reliance on hazardous waste characteristics is a reasonable approach to defining hazardous waste. Some commenters stated a preference for the hazardous waste characteristic mechanism over the alternative listing mechanism for identifying hazardous wastes. They noted that the characteristics are designed to measure directly the risks that subtitle C regulations are meant to control. Another advantage mentioned by commenters is that hazardous waste characteristics apply uniformly to all wastes, regardless of source.

A few commenters, however, objected to the expanded use of hazardous waste characteristics. Some of these commenters questioned the Agency's authority to develop the TC. One commenter asserted that RCRA section 3001(h) does not authorize EPA to take the action of adding the proposed organic constituents to the list of TC constituents. Another argued that the legislative history of HSWA indicates that changes in the leaching procedure should address the leaching of toxic metals only. This commenter claimed that the Agency had exceeded its statutory mandate by modifying the TC to include organics.

EPA strongly disagrees with those commenters who argued that the Agency lacks authority to expand the TC. The Agency's approach to identifying hazardous wastes through a self-implementing characteristics procedure was well established in 1984, when Congress passed HSWA. HSWA not only confirmed the validity of EPA's approach to identifying hazardous wastes by characteristics, but also directed the Agency to expand the scope of the TC. RCRA section 3001(h) states "* * * the Administrator shall promulgate regulations under this section identifying additional characteristics of hazardous waste, including measures or indicators of toxicity." Thus, the plain language of the statute authorizes EPA to broaden the TC.

Other commenters acknowledged EPA's authority to expand the TC, but offered policy arguments against the use of this mechanism for identifying hazardous wastes. Most commenters who argued against expanded use of characteristics favored use of the listing mechanism instead of an expanded TC. Some of these commenters noted that listings do not present the same technical problems of precision and accuracy as the characteristics. Others stated that listings are more easily enforced since they are not dependent upon use of a leaching procedure. Finally, some commenters claimed that by expanding the toxicity characteristic instead of listing additional wastes, EPA is unfairly shifting the burden for identifying hazardous wastes onto the shoulders of the regulated community.

The Agency maintains that the expanded use of characteristics, in addition to being consistent with the statutory mandate, offers advantages over listing for identifying broad categories of clearly hazardous waste. Establishing a characteristic allows the Agency to identify through one rule those wastes which are reasonably certain to pose a threat to human health and the environment by virtue of an inherent characteristic without expending vast Federal resources to study, characterize, and list numerous individual wastestreams. Since the Agency sets regulatory levels high enough to assure that wastes exhibiting the characteristic are hazardous, the characteristic approach does not bring wastes into the subtitle C system which do not present a substantial present or potential hazard to human health and the environment. By contrast, a listing, since it applies to all wastes that meet a listing description, may capture some individual wastestreams that do not actually pose a threat to human health and the environment. Generators may petition for delisting if this occurs; however, the delisting process can be burdensome to the petitioner and to EPA.

The Agency believes that the characteristic approach has the following advantages. First, it is less burdensome for the regulated community because the characteristic approach limits over-inclusiveness.

Second, reducing the potential of including wastes that do not, in fact, present a threat conserves hazardous waste management capacity and Agency administrative and enforcement resources for waste management activities that warrant priority attention. Finally, if necessary, a characteristic can be adapted quickly to possible future changes in science or technology, such as lower quantitation limits.

EPA acknowledges that there are also some advantages in using the listing mechanism for identifying hazardous wastes, particularly with respect to ease of implementation; the Agency thus will retain the listing approach as an alternative mechanism for identifying hazardous wastes. The Agency continues to believe that both the characteristic and listing approaches are valid and useful tools in identifying hazardous wastes that are subject to subtitle C regulation.

Finally, the Agency disagrees with commenters who contend that characteristics impose an unfair burden on the regulated community. Since the establishment of the hazardous waste identification framework in 1980, EPA has recognized that the primary responsibility for determining whether wastes exhibit hazardous waste characteristics rests with generators. In accordance with this, one of two criteria for establishing new characteristics is that they must be measurable by standardized and available testing protocols or reasonably detected by generators through their knowledge of the waste (see 40 CFR 261.10). Further, the regulations do not require testing; a generator may apply knowledge of the waste to determine if it is hazardous (40 CFR 262.11).

2. Mismanagement Scenario

Hazardous waste characteristics are designed to identify solid wastes that pose a threat to human health and the environment when *improperly* managed (RCRA section 1004(5)). Therefore, in developing the TC, EPA's first task was to determine how wastes might plausibly be mismanaged. The mismanagement scenario that both was reasonably realistic and presented the greatest environmental risks could then be chosen as the reasonable worst-case scenario and used as the basis for the revised characteristic. Specifically, the characteristic would be designed to identify any wastes from which toxic constituents would be likely to pose a threat to human health and the environment when managed in accordance with the selected scenario. In this way, EPA ensured that wastes would be adequately controlled, regardless of the manner in which they are actually managed.

In the June 13, 1986 proposal, EPA considered several alternative mismanagement scenarios for use in the development of the TC rule, including segregated management, co-disposal with municipal solid waste (the mismanagement scenario evaluated in the existing Toxicity Characteristic), co-disposal with industrial waste in a landfill subject to subtitle D requirements, and co-disposal with industrial waste in a landfill subject to subtitle C requirements that suffers some form of containment-system failure. The Agency rejected the subtitle C scenario as unrealistic because it is unlikely that waste generators would dispose of their wastes in the more expensive subtitle C landfills unless required to do so. Thus, it would not be a realistic scenario.

EPA determined that each of the remaining options was a plausible mismanagement scenario since most wastes are or may be managed in these types of land disposal facilities. The Agency rejected the segregated management or "monofill" scenario on the grounds that it did not represent a realistic worst-case practice. Facilities dedicated to the management of only one waste or the wastes of only one generator (i.e., a "monofill") are likely to pose less of a hazard than general municipal or industrial landfills because the design and operation problems for a monofill are simpler and the operators generally have considerably more information on the properties of the wastes that are managed. Also, industrial monofills generally do not generate organic acids that result in an aggressive leaching medium, as is the case for municipal landfills. Thus, industrial monofills pose less of a potential hazard than municipal solid waste (MSW) landfills. EPA also rejected the general (as opposed to "monofill") industrial landfill scenario on similar grounds (i.e., the generated leaching medium may not, in some cases, be as aggressive as in a municipal landfill). The Agency therefore retained the municipal landfill scenario as the reasonable worst-case mismanagement scenario for the revised TC.

a. Extent to Which Scenario is Reasonable. Several commenters challenged the municipal landfill scenario, claiming that it is based on an unreasonable assumption about the way in which industrial solid wastes are managed. These commenters claimed that industrial wastes are rarely disposed in MSW landfills. If landfilled at all, these wastes are more likely to be disposed in industrial landfills. In addition, industrial wastes are frequently managed in ways other than landfill disposal (e.g., incineration, recycling, treatment on the land, or treatment in surface impoundments). Thus, commenters argued, it is inappropriate to base the TC on the municipal landfill scenario.

EPA fully recognizes that not all industrial wastes are managed in MSW landfills. Nevertheless, the Agency continues to believe that the MSW landfill scenario is reasonable because such landfills have traditionally accepted unregulated industrial wastes. It is for this reason that the MSW landfill scenario was originally established as the basis for the EPTC (see 45 FR 33112, May 19, 1980). Although fewer types of industrial wastes are being disposed in municipal landfills now as compared to a few years ago, EPA's information confirms the continued appropriateness of this scenario. The "State Subtitle D Regulations on Solid Waste Landfills" (Ref. 5), and the "National Survey of Solid Waste (Municipal) Landfill Facilities" (Ref. 6) indicate that most states impose few restrictions, if any, on the types of nonhazardous wastes accepted at these facilities; moreover, a substantial quantity of the wastes received (typically five to eight percent) are industrial wastes. Thus, EPA continues to believe that the municipal solid waste landfill scenario represents the most appropriate reasonable worst-case mismanagement scenario.

Many commenters suggested that EPA grant exceptions or variances for wastes that are not co-disposed with MSW. In this way, the TC would apply only to those wastes that are actually managed in accordance with the underlying mismanagement scenario. The commenters noted that EPA could separately develop alternative characteristics for wastes managed in other ways to ensure adequate protection of human health and the environment.

After careful consideration, EPA has decided not to adopt this suggestion for various reasons. Applying the TC only to wastes actually managed as suggested in the mismanagement scenario would involve the creation of a management-based approach to identifying hazardous wastes. EPA's current approach to establishing characteristics which identify certain wastes as hazardous is not contingent upon the way individual wastes are actually managed. Rather, consistent with the RCRA Section 1004(5) definition of hazardous waste, EPA is

identifying waste "* * * that *may pose* a substantial present or potential hazard to human health and the environment *when improperly * * * managed*" (emphasis added).

EPA has considered the possibility of developing management-based characteristics, i.e., different characteristics for categories of waste depending on how they are typically managed. However, the Agency believes that such an approach would present a number of difficulties. For instance, a management-based approach to hazardous waste identification could substantially complicate effective implementation of the RCRA regulations. In particular, it is not always possible to determine—at the point of generation, during transport, or even as a waste enters a treatment, storage, or disposal facility—how a solid waste will ultimately be managed. EPA believes that the most effective and appropriate approach is to identify hazardous waste characteristics, not according to the ways in which individual wastes are managed, but by identifying properties of wastes that would pose a threat to human health and the environment if improperly managed. The Agency maintains that co-disposal with MSW is a mismanagement scenario that is reasonably realistic for most industrial solid wastes.

Another group of commenters suggested that EPA exempt broad classes of wastes that, because of their volume or physical properties, cannot reasonably be placed in a municipal landfill. Commenters specifically mentioned wastewaters, mining wastes, and municipal waste combustion ash. They noted that separate characteristics could be developed for each class of wastes that is excluded from the TC, based on the most appropriate mismanagement scenario for each individual category of waste.

After careful consideration of these comments, the Agency agreed that one category of wastes, wastewaters, might warrant special consideration based on the fact that the mismanagement scenario may not be reasonably applicable. Thus, EPA published a Supplemental Notice of Proposed Rulemaking on May 18, 1987 (52 FR 18583), which asked for comment on the development of separate regulatory levels for wastewaters. EPA received considerable information in response to this notice, and reviewed additional information on management of wastewaters in surface impoundments. After analysis of the waste management techniques, attenuative mechanisms, and hydrogeologic processes that govern constituent transport from surface impoundments, the Agency concluded that the DAFs for nondegrading constituents managed in surface impoundments were similar to those for the same constituents managed in landfills. Thus, for today's rule, the Agency determined that there is no technical basis for setting separate regulatory levels for wastewaters. This issue is discussed in more detail in subsection C, and further in sections III.E (Application of a Subsurface Fate and Transport Model) and III.H (Applicability to Wastes Managed in Surface Impoundments).

The Agency also does not agree that the mismanagement scenario is unreasonable for either non-exempt mineral processing wastes or municipal combustion ash. Although large volume wastes from the extraction, beneficiation and processing of ores and minerals are currently exempt from subtitle C regulation and will not be affected by the TC rule, small volume mineral processing wastes which may be subject to subtitle C regulation (see 54 FR 36592) can plausibly be disposed in municipal landfills. Municipal waste combustion ash can also be disposed in municipal landfills; in fact, the Agency estimates that only about 30 percent of municipal waste combustion facilities utilize ash monofills, and rely principally on municipal landfills for ash disposal. Issues related to the regulation of municipal waste combustion ash are discussed further in section III.I.5.

b. *Worst-Case Scenario Selection.* A few commenters agreed with EPA that the municipal landfill scenario is reasonable, but they claimed that the scenario does not represent a reasonable *worst* case. Most of these commenters asserted that co-disposal in a subtitle D industrial landfill poses more of a threat to human health and the environment than disposal in an MSW landfill. They pointed out, for example, that the regulatory standards for subtitle D industrial waste landfills are generally no more stringent than those for municipal landfills. The commenters further claimed that the leaching media in industrial landfills are frequently more aggressive than those in municipal landfills, especially when acids, bases, and solvents are present. Finally, the commenters noted that wastes placed in industrial landfills are not diluted with domestic wastes, as they are in a municipal landfill. The commenters concluded that because the TC proposal was based on a scenario that was less than worst-case, it would not adequately protect human health and the environment.

The Agency believes that the leaching media in a subtitle D municipal landfill is typically more aggressive than leaching media generated in industrial landfills due to the formation of acids during decomposition of putrescible wastes. "State Subtitle D Regulations on Solid Waste Landfills" (Ref. 5) shows that putrescible wastes are accepted at most subtitle D municipal landfills, while "Summary of Data on Industrial Non-Hazardous Waste Disposal Practices" (Ref. 7) shows solvents, acids, and bases (which can also increase the aggressiveness of leachate) are generally not disposed of in subtitle D industrial landfills. The potential for the formation of acids from decomposition of putrescibles in a subtitle D municipal landfill is greater than the potential of acids, bases, or solvents being present in a subtitle D industrial landfill, therefore supporting the municipal landfill scenario as a reasonable worst-case.

EPA acknowledges that, in certain circumstances, industrial wastes may pose more of a threat when placed in a subtitle D industrial landfill than when placed in a subtitle D municipal landfill. However, EPA believes that this situation will only occur in certain circumstances and thus represents a *worst case* rather than a *reasonable worst case*. Should the occurrence of this situation increase in frequency, the Agency will reconsider its approach for regulating these wastes in the future.

c. Extent to Which the Mismanagement Scenario for Wastes Managed in Surface Impoundments is Appropriate. In the May 18, 1987 notice, the Agency stated that it is considering developing a separate mismanagement scenario applicable to wastes that are managed in unlined surface impoundments. Developing a surface impoundment scenario, in addition to the landfill scenario, would mean that the TC would have two different sets of regulatory levels. Waste generators would first have to determine which scenario is appropriate and then would be responsible for evaluating whether their waste exceeded the applicable regulatory levels.

In the notice, the Agency requested comments on the appropriate criteria to be used in determining whether the characteristic should apply to a particular waste. The Notice suggested three possible approaches:

1. The "management-based" approach, which would apply only to those wastes actually managed in impoundments;

2. The "physical property-based" approach, which would apply to those wastes having a certain physical property indicating that they are likely to be managed in surface impoundments (e.g., percent solids less than 5 percent); and

3. The "definition-based" approach, which would apply to those discharged wastewaters that are subject to regulation under either section 402 or section 307(b) of the Clean Water Act.

Commenters from various industries generally supported a separate mismanagement scenario because they do not believe that the landfill mismanagement scenario is appropriate for aqueous wastes managed in surface impoundments. Most of these commenters requested that EPA adopt either the management-based approach or the definition-based approach.

Other commenters, however, opposed a separate mismanagement scenario for wastes managed in surface impoundments. These commenters contended that the surface impoundment mismanagement scenario would not be a reasonable worst-case scenario, particularly if the scenario modeled biodegradation, because significant biodegradation does not occur in all impoundments. In addition, the commenters stated that if the development of a surface impoundment mismanagement scenario results in two sets of regulatory levels, requirements for storage, handling, and transportation of a waste would be based on the management practice that the generator assumes or expects will actually occur. These commenters were opposed to this result and noted that wastes may not always be ultimately disposed in the manner originally intended by the generator.

After receiving these comments, the Agency decided to revisit the issue of whether or not a separate mismanagement scenario is necessary for surface impoundments due to inappropriately low regulatory levels. As described in section III.E.2, the Agency believes that evaluation of the physical phenomena that affect dilution/attenuation factors (DAFs) indicates that the DAFs generated for landfills are similar, if not greater than, DAFs for surface impoundments (i.e., the regulatory levels for surface impoundments would be equal to or more stringent than those for landfills). To confirm this conclusion, EPA then investigated whether results from modeling a surface impoundment scenario would in fact be significantly different from modeling a landfill scenario. As described later in this preamble, for nondegrading constituents, EPA calculated the 85th and 90th percentile DAFs for landfills (which ranged from 134 to 47) and the 85th and 90th percentile DAFs for surface impoundments (which ranged from 111 to 51). The surface impoundment results were obtained by using the updated model (EPACML) for the landfill scenario with leachate generation and environmental parameters (e.g., well distances, facility areas) derived from surface impoundment data.

As a result of this analysis, EPA is confident that the results from modeling of the landfill mismanagement scenario are also appropriate for wastes managed in surface impoundments (i.e., the DAFs are of the same order of magnitude). The Agency therefore does not plan to develop a separate surface impoundment mismanagement scenario at this time. Since the modeling results indicate that the dilution/attenuation factors for non- and minimally degrading constituents are all on the order of 100, the Agency has concluded that a single value of 100 is an appropriate choice for use in establishing the regulatory levels for all of the constituents addressed in today's rule. (See section III.E. of this preamble for an additional explanation of EPA's modeling efforts and choice of DAFs.)

3. Targeted Risks

Several commenters argued that, even if the co-disposal mismanagement scenario was appropriate, EPA improperly focused on a few selected risks from this scenario. Specifically, they claimed that the Agency restricted its consideration to human health risks resulting from ground water contamination. A number of commenters stated that the Agency should consider additional routes of human exposure, such as air volatilization, surface runoff, and direct contact. One commenter questioned why EPA was not employing the same multimedia risk and exposure models that were originally proposed for use in the land disposal restrictions program (see 51 FR 1602, January 14, 1986).

A few commenters further suggested that EPA take environmental risks (e.g., aquatic toxicity) into account, rather than concentrating exclusively on human health risks. They noted that RCRA section 3001(g), on which the TC rule is based, directs EPA to make changes in the EPTC so that it "accurately predicts the leaching potential of wastes which pose a threat to human health *and the environment* when mismanaged" (emphasis added).

EPA acknowledges that the characteristic being promulgated today focuses on human health risks from ground water contamination. However, the Agency does not believe that a single characteristic is capable of identifying all wastes that present a threat to human health and the environment. The present TC revisions are only the first step in a long-term strategy to refine and expand the hazardous waste identification program. Future characteristics may address hazards other than human health risks resulting from ground water contamination. EPA continues to believe, however, that ground water contamination, as a route of human exposure, is a priority concern.

4. Accuracy

Several commenters asserted that the proposed TC revisions failed to fulfill the statutory mandate to improve the "accuracy" of the characteristic as a predictor of the leaching potential of solid wastes. Specifically, these commenters argued that, even if EPA selected the proper mismanagement scenario, the Agency failed to model the targeted risks in a reasonable or appropriate manner. (Many of the commenters addressing this issue also focused on the accuracy of individual elements of the characteristic, such as the TCLP, the subsurface fate and transport model, or the chronic toxicity reference levels. These specific concerns are considered in sections III.B through III.F of today's preamble.)

A number of the commenters on the issue of accuracy concentrated on the interrelationship between the various elements of the TC. These commenters pointed out that EPA had employed conservative assumptions at each step in the development of the revised characteristic. They argued that even if these assumptions were reasonable in isolation, they would not be reasonable in combination. According to these commenters, the effect of compounding multiple conservative assumptions would be a characteristic that is unreasonably conservative, thereby resulting in costly overregulation.

Other commenters maintained the opposite position and stated that EPA had employed non-conservative assumptions for many elements of the characteristic. These commenters believe that these assumptions result in a characteristic that is not conservative enough and, thus, not sufficiently protective of human health and the environment.

The Agency disagrees with commenters' assertions that the elements of the TC are either too conservative or not conservative enough. The TC, in particular the fate

and transport model used to establish the dilution/attenuation factors (DAFs), requires the selection of numerical values for many parameters. Rather than selecting values for each parameter based upon isolated judgments as to what constitutes a "reasonable worst case" value, the Agency used the full range and distribution of values for all parameters for which such data was available. By implementing these data sets through a monte carlo simulation, the model output (i.e., the frequency distribution of DAFs) is as realistic as possible and spans the range of all possible outcomes rather than representing only the "best case," "reasonable worst-case," etc. That is, the model output represents all cases, arrayed according to their frequency of occurrence, and does not reflect any qualitative judgement as to what constitutes a "reasonable worst case" or any other "case." Accordingly, the determination as to which DAF value represents any particular "case" is solely dependent upon the selection of the cumulative frequency level. The Agency's selection of the cumulative frequency level is discussed in section III.E.4.d.

EPA does agree with commenters who recommended that the originally proposed subsurface fate and transport model could be revised to more realistically represent land disposal settings. Accordingly, EPA has modified the original model (EPASMOD) and has collected and incorporated new data into the model. These modifications and data are described in greater detail below (section III.E). The reader is referred to the Response-to-Comments Background Document for the Subsurface Fate and Transport Module (Ref. 1), which presents in detail each of the technical issues raised by public comments on the model and the Agency's responses to these issues. EPA believes that with these changes, the final TC rule represents a reasonable approach to the identification of hazardous wastes.

5. Solvent Override

In the June 13, 1986 TC proposal, the Agency discussed the possibility of incorporating a solvent "override" criterion into the TC because the presence of large amounts of solvents in a waste may result in leachate from the waste mobilizing hazardous constituents from co-disposed nonhazardous waste. The Agency considered setting regulatory levels for solvents based on the total concentration of solvent found in the TCLP extract.

Many commenters claimed that mobilization of toxicants in municipal landfills by industrial solvents is improbable. Commenters argued that there are no data to support the hypothesis that industrial solvents would alter the solubility of hazardous constituents in municipal waste. These commenters asserted that, at levels below their solubility in water, organic solvents exert very little influence on the solubility of other organics. Given the low concentrations of solvent wastes permitted for land disposal, the commenters contended that there is little probability that mobilization will occur. Commenters emphasized that, in general, subtitle D landfills do not accept organic solvents or liquids. Most industrial solvents already are listed hazardous wastes under 40 CFR 261.32 and 261.33 and will be managed in subtitle C hazardous waste facilities. Also, commenters contended that the contribution that industrial solvents will have on the solvent power of a solid-waste-landfill leachate is small compared to the contribution from solvents in household and small quantity generator waste.

Other commenters, however, expressed their support for EPA's proposal to characterize a waste by its ability to leach hazardous constituents from co-disposed wastes. They urged that a method be devised to monitor the influence that solvents have on the solubility of other waste constituents. One commenter suggested that the TCLP leachate could be tested for its ability to dissolve hazardous waste.

After careful consideration of the comments on this issue, EPA has decided not to include a solvent override in today's revision of the TC. EPA is not convinced by commenters who stated conclusively that mobilization of toxicants in municipal landfills by industrial solvents is improbable. EPA also is not convinced that the solvent contribution of industrial wastes at municipal landfills is small compared to that of household waste and small quantity generator waste. Moreover, the comparison to household waste and small quantity generator waste is not relevant to the issue of whether industrial wastes should be regulated based on solvent properties. However, the Agency does agree that there is insufficient data concerning the degree to which industrial solvents would mobilize other hazardous constituents and the amount of solvent wastes that are actually land disposed. Given this lack of data, a solvent override has not been included in today's rule. However, an override may be considered in future rulemakings if information becomes available that indicates a characteristic based on solvent properties is warranted.

One commenter claimed that RCRA does not authorize the imposition of restrictions based on toxicity simply because a substance can mobilize other constituents. The commenter asserted that the authority may reside elsewhere in RCRA, but in that case, a separate rulemaking, not involving the TC, should take place.

EPA does not agree; RCRA clearly authorizes EPA to regulate a waste as hazardous on the basis of its ability to mobilize other constituents. Further, regulating a waste as hazardous based on its ability to mobilize other constituents could be appropriately achieved through the characteristic mechanism. A solid waste is defined as hazardous if its "physical" or "chemical" characteristics "may pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed" (RCRA section 1004(5)). The capacity to mobilize toxic constituents falls within the definition of a physical or chemical characteristic of a waste which may pose a substantial environmental or health hazard. Thus, EPA may incorporate this approach into its characteristic waste identification scheme in the future.

Related to the issue of solubilization, another commenter asserted that if a chemical's capacity for mobilization is considered, treatment implemented to prevent mobilization (e.g., stabilization, containment, and chemical conversion) should be given equal consideration.

The TCLP does consider immobilization in the context of the co-disposal mismanagement scenario. The TCLP was developed to simulate leaching in a municipal landfill, addressing the degree of mobility (or, conversely, immobility) of both organic and inorganic compounds. Wastes that have been treated to prevent mobilization are less likely to leach toxic constituents. Such wastes may cease to exhibit the TC and would therefore no longer be considered hazardous wastes. Thus, the TCLP already accounts for immobilization of toxic constituents in a waste. However, if wastes that have been treated to prevent mobilization fail the TC, EPA believes that the wastes in question should be managed as hazardous wastes.

B. Constituents of Concern

As noted above, the proposed TC rule identified 52 constituents that, if present at specified levels in a waste extract,

would render the waste "hazardous" under RCRA subtitle C. Fourteen of the constituents were already encompassed by the existing EPTC. The selection of the remaining 38 constituents was based on the availability of adequate and verified data necessary for establishing (1) a chronic toxicity reference level and (2) a constituent-specific DAF. Thus, the Agency focused on those constituents for which there existed a promulgated or proposed Maximum Contaminant Level (MCL), a Reference Dose (RfD), or a Risk-Specific Dose (RSD), and for which there were sufficient data on environmental fate and transport processes to support modeling of a constituent-specific DAF. The June 13, 1986 proposal also announced EPA's intention to expand the list of TC constituents as additional data became available.

1. Final List of Constituents

The Agency is finalizing the regulatory levels for 25 of the proposed organic constituents (see Table B–1) that do not readily hydrolyze and for which a steady-state subsurface fate and transport model is appropriate. EPA may promulgate or repropose (as warranted) regulatory levels for the other organic constituents at a future date.

TABLE B–1.—LIST OF ORGANIC CONSTITUENTS INCLUDED IN THE EXPANDED TC RULE

Benzene	Hexachloro-1,3-butadiene
Carbon tetrachloride	Hexachlorobenzene
Chlordane	Hexachloroethane
Chlorobenzene	Methyl ethyl ketone
Chloroform	Nitrobenzene
m-Cresol	Pentachlorophenol
o-Cresol	Pyridine
p-Cresol	Tetrachloroethylene
1,4-Dichlorobenzene	Trichloroethylene
1,2-Dichloroethane	2,4,5-Trichlorophenol
1,1-Dichloroethylene	2,4,6-Trichlorophenol
2,4-Dinitrotoluene	Vinyl chloride
Heptachlor (and its hydroxide).	

Constituents with regulatory levels established under the EPTC will continue to be regulated at previously established levels, but will require application of the new TCLP instead of the EP.

2. Toxicants Versus Indicator Parameters

A few commenters recommended that EPA abandon its current focus on individual toxicants and rely instead on such indicator parameters as total organic carbon or total organic halogens. The commenters argued that such an approach would broaden the effective scope of the rule and reduce the burdens associated with making hazardous waste determinations.

The Agency does not believe it would be appropriate to use indicators as part of the TC. Indicators generally are used as screening levels or to set priorities for further investigations. They do not achieve sufficient specificity for the regulatory purposes of the TC. For instance, the two indicators suggested by the commenters do not in any way reflect differences in toxicities among organic constituents. Consequently, use of these indicators could lead to both nonhazardous wastes registering as hazardous and wastes that are clearly hazardous registering as nonhazardous.

3. Method for Selecting Constituents

Several commenters questioned the manner in which EPA selected toxicants for inclusion in the TC proposal. Some of these commenters charged that the Agency's choice of toxicants was entirely arbitrary. Others claimed that EPA had based its selections solely on the availability of toxicologic and hydrogeologic data, without considering the magnitude of the hazards presented by the constituents.

The commenters, in general, encouraged EPA to develop specific procedures and criteria for deciding which constituents should be included in the TC. A few commenters offered particular suggestions for the types of factors that might be considered in evaluating toxicants. The recommended factors included (1) the mobility and persistence of the constituents, (2) the frequency with which particular constituents have been found in industrial wastes or leachates from such wastes, and (3) the extent to which various constituents have been detected in ground water supplies in concentrations capable of posing a threat to human health and the environment.

EPA believes that its method for selecting TC constituents is both rational and consistent with the statutory mandate. While selection of constituents in today's rule is in part based on available toxicological data, it should be noted that both the fate and transport of constituents and the magnitude of hazards posed were also given consideration. The toxicants for which regulatory levels are being promulgated today are persistent and can represent a substantial threat to human health and the environment. Because of the lack of reliable data on the frequency with which certain toxic pollutants are found in leachates or ground water, an approach relying on such information would not provide an accurate and valid basis for selecting constituents. Further, where data do exist concerning the frequency at which certain constituents are found in the environment, accompanying information about risk posed in the environment is often absent.

Although the Agency proposed levels only for toxicants for which it has adequate and verified data, generally these data are available because these toxicants do represent a substantial threat to human health and the environment. The Agency will consider adding constituents as additional toxicological data and other supporting data become available; in making such decisions, the Agency will consider the factors identified by the commenters. Until such data are available, there is no technical basis to determine at what level a waste is hazardous under the TC.

A number of commenters argued that EPA was needlessly "cluttering" the characteristic with low-priority constituents that are either not being produced in the United States or are primarily found in wastes that are already subject to regulation.

The Agency does not agree that a substance no longer manufactured in the U.S. will not pose a threat from waste disposal. Some such substances may be contained in products imported into the U.S. Also, wastes generated during cleanup at Superfund sites or RCRA corrective action sites may exhibit the TC due to the presence of these constituents in wastes disposed at some time in the past. Further, the constituents could be manufactured again in the future.

Several of the toxicants listed in today's rule also appear among the list of discarded commercial chemical products, off-specification products, and container and spill residues, as listed in 40 CFR 261.33. A group of commenters argued that it would be redundant to establish regulatory levels for these toxicants because they are already regulated as listed hazardous wastes. Similarly, several commenters argued that some other listed wastes are regulated as hazardous wastes primarily because they contain constituents that will be regulated under the new TC.

EPA does not agree that setting levels for the selected toxicants would be redundant. While it is true that many of the newly designated TC constituents are constituents in wastes that are specifically listed as RCRA hazardous wastes, the current listings do not cover all of the wastestreams that may contain the TC constituents. For example, the commercial chemical product listings in 40 CFR 261.33 primarily encompass

unused products and off-specification variants of products that are generically identified using the name of a single toxic constituent; however, the listings would not cover other wastestreams containing the same constituent. The listings in 40 CFR 261.32 specify only a limited number of wastestreams that contain TC constituents. As another example, the spent solvent listings in 40 CFR 261.31 cover only those solvents that are used for their "solvent" properties (i.e., to solubilize or mobilize other constituents). The current listings do not encompass process wastes where solvent constituents are used as reactants or ingredients in the formulation of commercial chemical products. The Agency has previously stated that it is expanding the TC to bring these wastestreams into the hazardous waste management system (see 50 FR 53317, December 31, 1985). Thus, the Agency is appropriately promulgating TC regulatory levels for some constituents that have been used as the basis for listings.

One commenter argued that EPA's approach in selecting TC constituents was too restrictive, ensuring that many toxic constituents may never be regulated. The commenter emphasized that reliance on MCLs, RfDs, and RSDs does not provide a comprehensive list of constituents for which reliable toxicological data exist. In addition, the commenter noted that reliance on human health data does not necessarily address hazards to the environment.

EPA disagrees with the commenter's first point. Reliance on MCLs, RfDs, and RSDs uses the most sound toxicologic data base available to the Agency. At present, there are more than 365 constituents with verified toxicity levels available for EPA use. In regard to the second point, the Agency recognizes that factors other than human health effects are also important to the overall protection of the environment, but points out that the purpose of this characteristic is to identify wastes that pose hazards to human health via a ground water contamination route. In regard to the other factors, the Agency is supporting a research effort focusing on the determination of action levels for ecological effects and evaluating appropriate exposure assessment tools. When sufficient information concerning these ecological risks is available, the Agency will compare the ecological-risk-based levels to the TC regulatory levels to determine whether further revisions to these levels, based on ecological risk, are necessary.

4. Specific Organic Constituents

Many commenters expressed concern over several of the specific organic constituents that EPA proposed to include in the TC. The comments focusing on specific toxicants are discussed below.

a. Vinyl Chloride. A few commenters objected to the inclusion of vinyl chloride in the TC. They suggested that the constituent is already adequately regulated under the Clean Air Act, the Safe Drinking Water Act, the Toxic Substances Control Act, and the Food, Drug, and Cosmetic Act (for food contact applications).

The commenters are correct in stating that vinyl chloride and polyvinyl chloride are already regulated under other environmental health and safety statutes. However, none of these other regulatory authorities address the specific problem of ensuring against releases of vinyl chloride caused by the improper management of solid wastes containing this constituent. Most importantly, none of the authorities directly protect ground water supplies from vinyl chloride contamination. Because vinyl chloride is known to be toxic to humans and has been detected in ground water supplies, EPA believes that regulating the constituent under RCRA will add significantly to the protection of human health and the environment. An analysis completed as part of the Regulatory Impact Analysis (Ref. 8) of this regulation indicates that large quantities of wastes currently not regulated as hazardous contain concentrations of vinyl chloride above the regulatory levels. Therefore, the Agency believes that RCRA regulation under the TC is an important expansion of the overall regulatory coverage of this constituent which poses a threat to human health and the environment.

b. Bis(2-chloroethyl) Ether. One commenter questioned whether incorporating bis(2-chloroethyl) ether into the TC is appropriate, since only an extremely limited quantity of the constituent could potentially be released into the environment. The commenter noted that the constituent is used almost exclusively as an intermediate in the production of ionene polymers. Moreover, it is handled primarily by a single facility, which either recycles the material or destroys it by biodegradation prior to discharge under a National Pollutant Discharge Elimination System (NPDES) permit.

The Agency is not promulgating standards for bis(2-chloroethyl) ether today. As discussed in section III.E.2.a.7, bis(2-chloroethyl ether) is expected to hydrolyze significantly during transport. EPA does not have sufficient data to address the formation and toxicity of hydrolysis products. Thus, the Agency expects to address appropriate regulatory action for this constituent, along with the other hydrolyzing constituents, in a future **Federal Register** notice.

c. Toxaphene. One commenter questioned the need to include toxaphene in the list of TC analytes. The commenter argued that toxaphene has not been produced in the United States for several years and that generators should not be required to test their wastes for "phantom" constituents that are unlikely to be present.

EPA recognizes that toxaphene is no longer produced domestically. However, because previously generated toxaphene wastes are still being managed in treatment, storage, and disposal facilities there is still a potential threat to human health and the environment from improper management of wastes containing this constituent. Thus, wastes containing toxaphene above the regulatory level should be managed as hazardous wastes.

Moreover, toxaphene has been regulated as an EP constituent since 1980 and today's rule retains the existing regulatory level. Thus, today's rule does not alter any regulatory requirements with respect to toxaphene. The Agency does not believe that maintaining toxaphene as a TC constituent is unnecessarily burdensome to the regulated community. The final TC rule does not require solid waste generators to test their wastes. Instead, generators may continue to determine whether their wastes exhibit the hazardous waste characteristics by relying on their knowledge of the materials and processes that they employ (see 40 CFR 262.11(c)(2)). Accordingly, generators who have reason to believe that their wastes contain no toxaphene are not specifically required to test for that constituent.

d. Phenol. One commenter urged EPA to delete phenol from the list of TC constituents of concern because phenol biodegrades under both aerobic and anaerobic conditions.

The Agency is not including phenol in today's rule because the steady-state assumption used in the model to calculate DAFs in this final rule may not be appropriate for phenol. The Agency will promulgate a TC regulatory level for phenol at a later date.

The issue of biodegradation is discussed in section III.E.2.a.9 as it pertains to phenol and other constituents.

e. Pentachlorophenol. The Agency is considering revisions to the regulatory level for pentachlorophenol (PCP) because new health data indicate that PCP is more toxic than originally assumed. Two studies of different grades of PCP material were conducted by the National Toxicology Program, and the new data indicate that PCP is carcinogenic in male and female mice under the conditions of the bioassay. These studies were used to support the proposal to list additional wastes from the wood preserving industry (53 FR 53282, December 30, 1988).

The Agency is today finalizing the higher regulatory level for PCP although the Agency expects that the regulatory level will decrease in the future. EPA has determined that it is more prudent to effect control at a higher level during the period necessary to take comment on the appropriateness of modifying the TC level.

5. Specific Inorganic Constituents

As noted earlier, EPA did not propose to add any new inorganic TC constituents in the June 13, 1986 proposal. Nevertheless, the Agency received a large number of comments addressing the eight metallic species that were already covered by the EPTC. The Agency also received many comments on the possibility of proposing TC regulatory levels for nickel and thallium (mentioned in the June 13 proposal). The principal comments are discussed below.

a. Silver. A number of commenters urged EPA to delete silver from the list of TC constituents of concern. They pointed out that a variety of studies have demonstrated that the chief effect of silver on humans is argyria, a blue-gray discoloration of the skin and internal organs. The commenters also stated that argyria is generally considered a cosmetic effect, rather than a health effect, because it does not impair the functioning of the body. While the commenters acknowledged that free silver ions may be toxic to aquatic life, they claimed that such ions are rarely discharged into the environment. Moreover, they argued that even if such ions were discharged, they would quickly be converted into insoluble salts, such as chlorides, sulfides, and phosphates. Finally, the commenters asserted that deleting silver from the TC list would be consistent with current EPA policy. They pointed out that the Agency has not proposed a Recommended Maximum Contaminant Level (RMCL) for silver in drinking water, on the grounds that silver does not cause adverse health effects.

EPA acknowledges that an RMCL (now referred to as a Maximum Contaminant Level Goal, or MCLG) has not been proposed for silver because the only known adverse effect from exposure to silver is argyria. However, the Agency has specifically requested comments on whether it is appropriate to consider argyria a cosmetic effect as opposed to a health effect (see 50 FR 40979, November 13, 1985). EPA believes it would be inappropriate to remove silver from the list of TC constituents until this issue is resolved. If EPA determines, within the scope of the Safe Drinking Water Act rulemaking, that silver does not pose a threat to human health and the environment, the Agency will consider proposing the deletion of silver from the list of TC constituents.

b. Chromium. Several commenters objected to the inclusion of total chromium as a TC constituent of concern. They argued that only hexavalent chromium (Cr(VI)) has been demonstrated to pose a threat to human health and the environment. Although they acknowledged that trivalent chromium (Cr(III)) can be oxidized to hexavalent chromium under certain conditions, they contend that such conversion is unlikely to occur in ground water environments. The commenters, in fact, claimed that iron-bearing soils are likely to effect the opposite transformation, from Cr(VI) to Cr(III). Finally, they stated that even if the oxidation reaction did occur, the resulting Cr(VI) concentrations would be so low as not to present a significant danger to human health and the environment.

EPA continues to believe that total chromium concentrations should be considered in determining whether solid wastes qualify as characteristic hazardous wastes. The Agency has long been aware of the fact that trivalent chromium is less toxic than hexavalent chromium. Nevertheless, the Agency also has been concerned that trivalent chromium could be converted to the hexavalent form under certain plausible mismanagement conditions. It is for this reason as well as the fact that the NIPDWS was developed for total chromium that the regulatory level for chromium in the EPTC was originally established on the basis of total chromium concentrations (see 45 FR 33084, May 19, 1980).

The Agency later proposed to amend the EPTC so that it would apply to hexavalent chromium rather than total chromium (45 FR 72029, October 30, 1980; see also 48 FR 22170, May 17, 1983). This proposal was based on the fact that trivalent chromium has significantly lower migratory potential than hexavalent chromium and is less mobile if it does migrate from a waste matrix. At that time, the Agency also believed that there was little likelihood that Cr(III) could oxidize to Cr(VI) under most plausible types of improper waste management.

More recent evidence, however, suggests that the conversion from trivalent to hexavalent chromium may occur in a number of environmental situations (see 51 FR 26420, July 23, 1986, fn. 6). For example, Cr(III) has been found to oxidize readily to Cr(VI) under conditions found in many field soils. This reaction is catalyzed by manganese dioxide, which is commonly present in both soils and sediments. Moreover, it has been shown that water treatment involving chlorination will effectively transform Cr(III) to Cr(VI). The normal presence of residual oxidizing capacity in treated water is capable of maintaining dissolved chromium in the higher valence state (50 FR 46966, November 13, 1985). Thus, if trivalent chromium is present in high concentrations in well water, chlorination can result in correspondingly high concentrations of hexavalent chromium at the point of exposure (i.e., at the tap).

For these reasons, EPA's original concerns regarding the potential for trivalent chromium to be converted to hexavalent chromium remain. Thus, the Agency believes that the prudent course is to regulate total chromium concentrations under the TC. It should be noted that because of this, the Agency is considering proposing the deletion of the exclusion for specific chromium wastes that contain virtually no hexavalent chromium [see 40 CFR 261.4(b)(6)(i)]. Such a change would affect certain wastes from the leather tanning and finishing industry (as well as certain sludges from the production of TiO_2 pigment using chromium-bearing ores by the chloride process).

c. Nickel and Thallium. Several commenters expressed support for incorporating nickel and thallium into the list of TC analytes. One commenter emphasized that unless such a step is taken, a major inequity will continue to exist in the regulation of listed and unlisted wastes that contain comparable levels of nickel. Many other commenters, however, objected to the inclusion of nickel and thallium in the TC. Most of these commenters doubted whether either element poses a threat to human health and the environment, noting that neither one is on the Primary or Secondary Drinking Water Standards list.

EPA has decided not to add more metals to the TC constituent list at this time because technical issues remain as to their subsurface fate and transport. The regulatory levels for the toxicity characteristic metals are not changed in this rule (i.e., EPA is retaining the regulatory levels set under the previous EP) pending further Agency validation and study of the fate and transport of metals. These validation and study efforts are focusing on the development of the metal speciation model (MINTEQ).

The Agency is developing MINTEQ for the evaluation of the mobility of arsenic, barium, cadmium, chromium, lead, mercury, nickel, selenium, silver, and thallium in ground water. A modified version of MINTEQ will be used in combination with a set of generic ground water specifications and subsurface conditions to determine metal solubility limitations. EPA will then use these results, in conjunction with the subsurface fate and transport model, to estimate dilution during transport to the down-gradient exposure point. (See discussion of the development of the subsurface fate and transport of metals at 51 FR 1653, January 14, 1986.) The Agency is not specifically proposing an approach for evaluating the fate and transport of metals in today's rule, but does expect to propose, at a later time, DAFs specific to metals, including nickel and thallium, and will address comments relating to the toxicity of nickel and thallium at that time.

C. Chronic Toxicity Reference Levels. The Agency proposed to use chronic toxicity reference levels (combined with DAFs) to calculate leachate concentration limits for individual constituents; a waste containing constituents equal to or above those levels would be a hazardous waste under the TC. Specifically, EPA proposed to use the MCLs promulgated as part of the National Interim Primary Drinking Water Standard (NIPDWS), where available, as the starting point for establishing the regulatory levels for each of the constituents. For those constituents for which no MCLs had been promulgated, the Agency proposed to use oral Reference Doses (RfDs) and Risk-Specific Doses (RSDs) to develop chronic toxicity reference levels for the noncarcinogens and carcinogens, respectively. Because exposure to toxic constituents can occur by multiple pathways, the Agency also proposed to apportion the acceptable health risk level of each noncarcinogenic constituent among the various possible routes of exposure. The Agency solicited public comment on: (1) Whether RfDs and RSDs are appropriate to use when MCLs are available; (2) the health levels proposed for RfDs and RSDs; (3) the associated risk levels; and (4) the assumptions used to apportion exposure to the different possible routes. The Agency's decisions regarding the health-related issues for which it solicited comments are presented below.

1. Maximum Contaminant Levels

The original toxicity characteristic—the EPTC (40 CFR 261.24)—used the NIPDWS developed under the Safe Drinking Water Act as the toxicity levels to derive the regulatory levels for the eight metals, four insecticides, and two herbicides then regulated. (For ease of discussion, the acronym "MCLs" will be used in subsequent sections to refer collectively to both MCLs and the existing NIPDWS.) EPA plans to continue this approach in the expanded TC for those constituents for which MCLs are available.

A number of commenters expressed support for the use of MCLs, when they exist, as the starting point for calculating regulatory levels for the TC. Most of these commenters argued that the MCLs provide adequate protection of human health. These commenters stated that MCLs are reliable, scientifically defensible, and recognized and understood by the general public.

Several commenters supported the use of MCLs because factors relating to cost and available treatment technology may be considered along with health effects in the development of the standards. These commenters asserted that MCLs represent a reasonable balance among the factors EPA must consider, while RfDs and RSDs are more limited. A number of commenters also felt that the use of MCLs provides a level of protection consistent with other regulatory programs.

In contrast, other commenters supported the use of RfDs and RSDs as the basis for the chronic toxicity reference levels even when MCLs are available for those constituents. These commenters stated that health-based levels are an appropriate starting point for the regulation. Because the MCLs consider other factors relating to technical and economic feasibility in addition to toxicity, they contend that the RfDs and RSDs are preferable. Many of these commenters also supported a consistent approach for all constituents regulated by the TC, rather than using MCLs for some and RfDs and RSDs for others.

Several commenters asserted that because the MCLs were developed for the purpose of regulating the concentrations of constituents in treated water "at the tap," it is not appropriate to use the same standards for defining hazardous wastes. Several commenters also expressed concern that the MCLs developed under the Safe Drinking Water Act are potentially more stringent than RfDs and RSDs. This concern was most strongly expressed regarding carcinogens, for which Maximum Contaminant Level Goals (MCLGs), previously referred to as Recommended Maximum Contaminant Levels (RMCLs), are set at zero, and MCLs are set at technically achievable levels that most closely approach this zero goal.

EPA maintains that the MCLs, when they exist, are the most appropriate health criterion to use as the starting point for developing the regulatory levels. The exposure scenario developed for the TC is based on ingesting contaminated drinking water, and because MCLs are developed for regulation of drinking water, they clearly are relevant. In addition, the development of the MCLs follows a rigorous methodology in which all available health information is evaluated in establishing the MCLGs. The MCLs are set as close to the MCLGs as is feasible, and the Agency believes that MCLs are protective of human health.

It should be noted that EPA evaluates the health risks that are associated with various contaminant levels in order to insure that the MCL adequately protects the public health. For drinking water contaminants, EPA sets a reference risk range for carcinogens at 10^{-4} to 10^{-6} excess individual risk from lifetime exposure. Most regulatory actions in a variety of EPA programs have generally targeted this range using conservative models which are not likely to underestimate the risk. Since the underlying goal of the Safe Drinking Water Act is to protect the public from adverse effects due to drinking water contaminants, EPA seeks to insure that the health risks associated with MCLs for carcinogenic contaminants are in the general range of 10^{-4} to 10^{-6}.

EPA acknowledges that use of MCLs will, in some cases, result in chronic toxicity reference levels that are lower than those that would be calculated using the RfD methodology. For example, many of the non-carcinogenic compounds have MCLs which are approximately 10 to 20 percent of their respective RfDs because exposure sources other than contaminated drinking water are considered in setting the MCLs. On the other hand, the MCLs for some of the constituents addressed in the proposal are higher than the

levels that would be calculated using the RSD methodology. An example of this situation arises when the health criteria are at such low levels that analytical methods are not available to measure these levels. In cases where the MCL is higher than a purely health-based level, the Agency notes that use of the MCL is not inconsistent with today's rule since the purpose of the rule is to identify wastes that clearly pose hazards, not to identify the lowest level of hazard. However, regardless of whether they are higher or lower than the levels calculated using the RfD or RSD methodologies, EPA believes that MCLs are the appropriate starting point for developing regulatory levels for the TC.

For the constituents lacking MCLs, EPA must rely on the available methodologies to provide chronic toxicity reference levels that are scientifically defensible and protective of human health. EPA believes that the RfD and RSD methodologies meet these two criteria. EPA also realizes that inconsistencies will exist when different methodologies are employed for developing regulatory levels. The Agency intends to evaluate newly promulgated MCLs to determine on a case-by-case basis whether the TC regulatory level will change significantly if the new MCL is used, and to revise the regulatory levels, as appropriate. In the long run, this should provide internal consistency for the TC, as well as consistency with other regulatory programs.

Some commenters supported the use of MCLGs as the basis for chronic toxicity reference levels under the TC because the MCLGs are based on health effects alone, whereas the MCLs consider other factors as well, such as economic and technical feasibility.

EPA disagrees with the commenters who stated that MCLGs are more appropriate than MCLs for use in the TC. MCLGs are nonenforceable health goals for drinking water, which are to be set at levels that would result in no known or anticipated adverse health effects with an adequate margin of safety. The Agency has adopted the policy of setting the MCLGs for probable human carcinogens (Group A and B carcinogens) at zero. If the Agency were to use MCLGs rather than MCLs in the TC, the regulatory levels for defining a waste as hazardous would be based on health criteria that, at least for carcinogens, are more stringent than the criteria used to set concentrations acceptable for direct human ingestion of drinking water. In addition, the regulatory levels would be virtually impossible to detect analytically. This would mean that any waste that contains detectable levels of carcinogens would be hazardous regardless of the potency of the carcinogen or the risk presented by that waste. EPA believes that this is an inappropriate approach for the TC because it would result in the regulation of wastes which are not necessarily hazardous.

2. Risk-Specific Doses for Carcinogenic Constituents

For constituents for which no MCLs have been established, EPA uses oral RSDs to develop chronic toxicity reference levels for carcinogens. The RSD is an upper-bound estimate of the average daily dose of a carcinogenic substance that corresponds to a specified excess cancer risk for lifetime exposure. A predetermined risk level and the oral carcinogenic slope factor estimated by EPA's Carcinogen Risk Assessment Verification Endeavor (CRAVE) Workgroup or Carcinogen Assessment Group (CAG) are used to calculate the RSD.

The Agency proposed a risk level of concern based on the weight of evidence regarding carcinogenicity of each constituent. Constituents classified as known or probable human carcinogens (Group A or B) were assigned a risk level of 1 in 100,000 (i.e., 10^{-5}), while constituents classified as possible human carcinogens (Group C) were assigned a risk level of 1 in 10,000 (i.e., 10^{-4}).

The Agency received comments regarding both the weight-of-evidence approach for establishing risk levels and the risk levels selected. In particular, one commenter supported the Agency's proposal, stating that a single risk level is not appropriate for all constituents, and that use of the weight-of-evidence approach avoids making regulatory decisions based on insufficient data. Another commenter also supported the use of weight-of-evidence to assign risk levels, but stated that it is inappropriate to regulate both known and probable human carcinogens at the same level of risk. Alternatively, a third commenter asserted that the weight-of-evidence approach is inappropriate because (1) new information is constantly being developed on the health effects of toxic constituents, so the weight of evidence is constantly changing, and (2) the classification scheme does not take into account the potency of the carcinogenic risk.

The Agency also received specific comments regarding both the weight-of-evidence approach and the selection of specific risk levels. Several commenters addressed the risk level at which the Agency proposed to regulate carcinogens. Some commenters specifically expressed support for EPA's proposal to regulate Class A and B constituents at a 10^{-5} risk level and Class C constituents at a 10^{-4} risk level. One commenter stated that because the procedure for developing risk estimates is extremely conservative, the proposed risk levels would not adversely affect human health and the environment. Another commenter noted that the stated risk levels are estimates of the upper confidence bound of risk and not the maximum likelihood estimate; thus, the actual risk to the public would be less than the stated level.

Other commenters supported the use of a 10^{-6} risk level for all carcinogens. These commenters argued that the use of the proposed risk levels represents a serious weakening in EPA's regulation of carcinogens and is inconsistent with other policies in effect in other EPA programs.

With respect to the weight-of-evidence approach, the Agency has decided to establish a single risk level of concern for all potential carcinogens (i.e., the Agency will not assign a specific risk level to a specific weight-of-evidence carcinogenicity classification for this rulemaking). The weight-of-evidence approach for classifying a constituent as carcinogenic is based primarily on the amount and quality of data that are available rather than the strength of the toxic response in animals or humans. In effect, it is a qualitative assessment that takes into account the uncertainty in the data for determining whether an agent is carcinogenic to humans. This means that the actual quantitative difference in risk between an "A" and "B" carcinogen as classified by the weight of evidence may either be zero or may be orders of magnitude. Thus, EPA believes that both the weight-of-evidence and the strength of the toxic response (i.e., potency) should be considered in making regulatory decisions within the context of the TC.

With regard to the specific risk level chosen, the Agency has decided to set the level for carcinogens (Groups A, B, and C) at 1 in 100,000 (i.e., 10^{-5}) for the final rulemaking. Characteristics are established at levels at which the Agency has a very high level of certainty that a waste which exhibits these properties needs to be managed in a controlled manner (i.e., as a hazardous waste). The Agency realizes that not all wastes which exhibit properties at concentrations below the regulatory levels are necessarily safe for disposal as nonhazardous wastes. Rather, those wastes having properties lower than the

regulatory levels and which are demonstrated to pose a hazard to human health or the environment still remain subject to waste-specific evaluations under the hazardous waste listing program. Wastes which are determined to require controlled management after consideration of the factors identified in 40 CFR 261.11(a)(3) (e.g., the nature of the toxic constituents, toxicant mobility under various environmental management scenarios, volume of waste generated and potential method of management) are then specifically listed as hazardous wastes and subjected to the appropriate RCRA management controls. This reflects EPA's philosophy, first articulated in May of 1980, that the characteristic defines broad classes of wastes that are clearly hazardous, while the listing process defines some wastes that may not exhibit the characteristics but are nonetheless hazardous wastes (45 FR 33111, May 19, 1980).

The chosen risk level of 10^{-5} is at the midpoint of the reference risk range for carcinogens (10^{-4} to 10^{-6}) targeted in setting MCLs. This risk level also lies within the reference risk range (10^{-4} to 10^{-6}) generally used to evaluate CERCLA actions. Furthermore, by setting the risk level at 10^{-5} for TC carcinogens, EPA believes that this is the highest risk level that is likely to be experienced, and most if not all risk will be below this level due to the generally conservative nature of the exposure scenario and the underlying health criteria. For these reasons, the Agency regards a 10^{-5} risk level for Group A, B, and C carcinogens as adequate to delineate, under the TC, wastes that clearly pose a hazard when mismanaged.

3. Apportionment of Health Limits

EPA proposed to account for potential exposure from sources other than the TC scenario by apportioning the RfD-based chronic toxicity reference levels. The apportionment scheme effectively reduced each such chronic toxicity reference level to 50 percent of its original value, (i.e., 50 percent of the RfD). The Agency also proposed to estimate environmental partitioning of the apportioned health limits in air and water according to a simplified fractionation scheme using Henry's Law Constants (H_c) and octanol-water coefficients (K_{ow}) for individual constituents. The Agency did not propose to apportion the chronic toxicity reference levels based on RSDs or MCLs.

Several commenters addressed the Agency's proposal to apportion the RfDs. Commenters that criticized the Agency's proposed apportionment scheme argued that it was arbitrary, overly conservative, and unnecessary. Several commenters recommended that EPA either use more realistic estimates of exposure based on the available constituent-specific data or not apportion at all.

After a review of comments on the proposed regulation and consideration of the available data, the Agency has decided not to apportion in this rulemaking. Although the concept of apportionment has some scientific basis in that individuals are exposed to many of the chemicals of concern through more than one route of exposure and from more than one source, the implementation of the concept is very difficult when adequate data on the amount of exposure and/or health effects from all routes of exposure do not exist. Thus, due to the lack of sufficient data to determine an appropriate apportionment factor for the various constituents, the Agency now concludes that its proposed apportionment scheme cannot be supported at the present time. Of course, the proposed apportionment would deal with uncertainty by erring on the side of safety; nevertheless the Agency believes that the conservative approach used to deal with uncertainty in the development of the RfD is sufficiently stringent to define those wastes that clearly pose hazards. This approach is in accordance with the Agency's treatment of noncarcinogens. The Agency therefore will not apportion the RfDs for this rulemaking.

A few commenters criticized the Agency's proposed method for fractionating the apportioned RfD between air and water. These commenters questioned the technical basis of the Agency's approach and/or recommended alternative schemes. The Agency agrees with commenters that the technical basis for supporting fractionation as proposed is inadequate to predict media-specific concentrations. The Agency is exploring the development of an appropriate model. Thus, EPA has decided not to apportion the RfD and not to fractionate the RfD between air and water in this rulemaking.

Other commenters addressed the apportionment of RSDs for carcinogenic constituents. Several of these commenters agreed with EPA's decision not to apportion RSDs, stating that doing so would result in very low regulatory thresholds for some constituents. The commenters also pointed out that many conservative assumptions are already incorporated into the development of the RSDs for carcinogens. Others commented that RSDs should be apportioned because humans are exposed to these constituents by multiple routes.

The Agency continues to believe that it is not appropriate to apportion the RSDs for carcinogenic constituents. RSDs are estimated by a procedure that must deal with unavoidable uncertainties and is therefore intentionally conservative. The Agency stated in the preamble to the proposed rule that a difference in dose of a factor of 2 is still well within the margin of uncertainty of the estimated RSD (51 FR 21667, June 13, 1986).

Table C–1 presents chronic toxicity reference levels for the constituents in today's rule. The Agency received a number of comments on specific chronic toxicity reference levels. In some cases, EPA responded to these comments in the notice of proposed changes to the health levels on May 19, 1988 (53 FR 18024). Other chemical specific comments are addressed in the background document (Ref. 3).

TABLE C–1.—CHRONIC TOXICITY REFERENCE LEVELS

Constituent	Chronic toxicity reference level (mg/L)	Basis
Arsenic	0.05	MCL
Barium	1.0	MCL
Benzene	0.005	MCL
Cadmium	0.01	MCL
Carbon tetrachloride	0.005	MCL
Chlordane	0.0003	RSD
Chlorobenzene	1	RfD
Chloroform	0.06	RSD
Chromium	0.05	MCL
o-Cresol	2	RfD
m-Cresol	2	RfD
p-Cresol	2	RfD
2,4-D	0.1	MCL
1,4-Dichlorobenzene	0.075	MCL
1,2-Dichloroethane	0.005	MCL
1,1-Dichloroethylene	0.007	MCL
2,4-Dinitrotoluene	0.0005	RSD
Endrin	0.0002	MCL
Heptachlor (and its hydroxide).	0.00008	RSD
Hexachlorobenzene	0.0002	RSD
Hexachloro-1,3-butadiene	0.005	RSD
Hexachloroethane	0.03	RSD
Lead	0.05	MCL
Lindane	0.004	MCL
Mercury	0.002	MCL
Methoxychlor	0.1	MCL
Methyl ethyl ketone	2	RfD
Nitrobenzene	0.02	RfD
Pentachlorophenol	1	RfD
Pyridine	0.04	RfD
Selenium	0.01	MCL
Silver	0.05	MCL
Tetrachloroethylene	0.007	RSD
Toxaphene	0.005	MCL
Trichloroethylene	0.005	MCL
2,4,5-Trichlorophenol	4	RfD
2,4,6-Trichlorophenol	0.02	RSD
2,4,5-TP acid (Silvex)	0.01	MCL

TABLE C-1.—CHRONIC TOXICITY REFERENCE LEVELS—Continued

Constituent	Chronic toxicity reference level (mg/L)	Basis
Vinyl chloride	0.002	MCL

All RSDs are calculated at the 10^{-5} risk level.

D. Use of Generic Dilution/Attenuation Factors (DAFs)

In the May 19, 1988 supplemental proposal, EPA requested comment on an alternative strategy for setting DAFs in the TC. The alternative involved setting DAFs for these constituents in two phases. The first phase would use a generic DAF in a manner similar to the existing EPTC, which uses a DAF of 100 for all EP constituents. In the second phase, the Agency would further address the manner in which the DAFs are calculated and would either: (1) Continue to use generic DAFs, (2) employ a subsurface fate and transport model to develop constituent-specific DAFs, or (3) use some combination of the two approaches. The Agency also specifically solicited comment on the use of a generic DAF of 100 or 500 in the first phase.

Many commenters recognized the need to expeditiously promulgate the TC; however, most opposed the two-phased approach, arguing that it would cause undue economic burden by: (1) Forcing industries to design new treatment programs for one group of wastes at certain regulatory levels, and a few years later to redesign in order to accommodate new levels and wastes, and (2) over-regulating certain chemical substances under the first generic-DAF phase that may then not be regulated under the second phase. Some commenters were concerned, on the other hand, that EPA would set the generic DAFs so high (to avoid overregulation) that some substances would be under-regulated.

Most commenters opposed the use of generic DAFs and urged EPA to retain the constituent-specific modeling approach. These commenters argued that a generic DAF would be arbitrary and not scientifically defensible; that use of the generic DAFs would violate the statutory requirements to develop a process that accurately assesses leaching ability and differentiates between hazardous and nonhazardous wastes; and that the diversity in dilution and attenuation attributes across the constituents would cause any generic DAF to either severely under-regulate or severely overregulate a large number of the constituents. Even those few commenters who supported the two-phased approach recommended that the Agency move rapidly to the second phase and employ the modeling approach to set DAFs.

EPA acknowledges that the problems noted by the commenters are important ones. The Agency requested comment on the generic DAF approach because of the likelihood that the issues surrounding the proposed fate and transport model for establishing constituent-specific DAFs would not be resolved in a timely manner. Since the Agency has been able to address the concerns regarding the subsurface fate and transport model for the constituents identified in today's regulation, the Agency has decided to use the model to develop DAFs. Consequently, the DAFs set in today's rule for nonhydrolyzing constituents for which the steady-state solution is appropriate are not viewed by EPA as interim and are supported by the subsurface fate and transport model. The Agency intends to establish DAFs for constituents not addressed in today's rule on a constituent-specific basis, and regulatory levels for those constituents will be proposed or promulgated (as warranted) at a later date.

E. Application of a Subsurface Fate and Transport Model

1. Introduction

On June 13, 1986, EPA proposed an approach (see 51 FR 21648) for estimating regulatory concentration levels in a waste leachate using chronic toxicity reference levels, combined with constituent-specific dilution/attenuation factors (DAFs) derived from the application of a subsurface fate and transport model. The model (EPASMOD) was first described for public comment on January 14, 1986 (51 FR 1602).

A DAF represents a reduction in the concentration of a constituent expected to occur during transport through ground water from the bottom of a disposal unit to a drinking-water source. In response to the proposal and supplemental notices (see Section II, Table II.1), the Agency received numerous comments on the subsurface fate and transport model used for the calculation of DAFs. This section describes the different proposals related to the use of the subsurface fate and transport model, the modifications to the model in response to public comments, and the results obtained with the use of the modified model.

a. June 13, 1986 Proposed Rule (51 FR 21648). The Agency's June 13, 1986 proposal used a subsurface fate and transport model (EPASMOD) to calculate specific DAFs for each of the 44 organic hazardous constituents (see Table E-1). The DAFs for each constituent were calculated using the model, incorporating compound-specific hydrolysis and soil adsorption data coupled with parameters describing the subsurface environment (e.g., ground water flow rate, hydraulic conductivity of the aquifer, ground water pH, etc.). The Agency proposed modeling a scenario of waste mismanagement at a subtitle D municipal landfill. Data were incorporated in the model using a monte carlo simulation.

TABLE E-1.—DILUTION ATTENUATION FACTORS FOR TOXICITY CHARACTERISTIC ORGANIC CONSTITUENTS

Constituent	LOG Kow [1]	Ka [2]	Kb [2]	Kn [2]	D/A factor [3]
Acrylonitrile	0.07	>1/yr	>1/yr	>1/yr	14.4
Benzene	2.13	NHYF [4]	NHYF	NHYF	14.4
Bis(2-chloroethyl)ether	1.04	NH [5]	NH	8E-5/hr	14.4
Carbon disulfide	2.16	NH	>10/yr	NH	14.4
Carbon tetrachloride	2.96	NH	NH	NH	14.4
Chlordane	[7] 5.48	NH	>10/yr	NH	14.4
Chlorobenzene	2.87	NH	1E-6/hr	NH	14.4
Chloroform	1.96	NH	0.23/hr	3E-9/hr	14.4
o-Cresol	2.15	NHYF	NHYF	NHYF	14.4
m-Cresol	2.15	NHYF	NHYF	NHYF	14.4
p-Cresol	2.15	NHYF	NHYF	NHYF	14.4
2,4-D	2.70	NHYF	NHYF	NHYF	14.4
1,2-Dichlorobenzene	3.56	NH	1E-5/hr	NH.	14.4

TABLE E-1.—DILUTION ATTENUATION FACTORS FOR TOXICITY CHARACTERISTIC ORGANIC CONSTITUENTS—Continued

Constituent	LOG Kow [1]	Ka [2]	Kb [2]	Kn [2]	D/A factor [3]
1,4-Dichlorobenzene	3.56	NLFG [6]	NLFG	NLFG	14.4
1,2-Dichloroethane	1.40	NH	NH	7.2E-5/hr	75.0
1,1-Dichloroethylene	2.13	NLFG	NLFG	NLFG	14.4
2,4-Dinitrotoluene	2.30	NLFG	NLFG	NLFG	14.4
Endrin	[7] 3.54	>1/yr	>1/yr	>1/yr	14.4
Heptachlor (and its hydroxide)	[7] 4.61	NLFG	NLFG	NLFG	14.4
Hexachlorobenzene	6.42	<1/yr	<1/yr	<1/yr	14.4
Hexachlorobutadiene	4.24	NLFG	NLFG	NLFG	14.4
Hexachloroethane	4.22	>1/yr	>1/yr	>1/yr	14.4
Isobutanol	0.74	>1/yr	>1/yr	>1/yr	14.4
Lindane	3.40	>1/yr	>1/yr	>1/yr	14.4
Methoxychlor	[7] 4.30	NH	1.4/hr	7.5E-5/hr	14.4
Methylene chloride	1.26	NH	NH	1.18E-8/hr	14.4
Methyl ethyl ketone	0.30	NLFG	NLFG	NLFG	14.4
Nitrobenzene	1.90	NLFG	NLFG	NLFG	14.4
Pentachlorophenol	5.06	NH	>1E-4/hr	NH	14.4
Phenol	1.49	NHYF	NHYF	NHYF	14.4
Pyridine	0.68	NLFG	NLFG	NLFG	14.4
1,1,1,2-Tetrachloroethane	2.81	NH	1.3/hr	2.2E-7/hr	14.4
1,1,2,2-Tetrachloroethane	2.42	NH	2.6E+ 3/hr	NH	65.0
Tetrachloroethylene	3.03	NLFG	NLFG	NLFG	14.4
2,3,4,6-Tetrachlorophenol	4.33	NH	1E-5/hr	NH	14.4
Toluene	2.82	NHYF	NHYF	NHYF	14.4
Toxaphene	[7] 5.30	NH	>10/yr	NH	14.4
1,1,1-Trichloroethane	2.50	NH	NH	1.1E-4/hr	150.0
1,1,2-Trichloroethane	1.91	NH	13/hr	4.3E-7/hr	20.0
Trichloroethylene	2.28	NLFG	NLFG	NLFG	14.4
2,4,5-Trichlorophenol	3.86	NH	1E-5/hr	NH	14.4
2,4,6-Trichlorophenol	3.58	NH	1E-5/hr	NH	14.4
2,4,5-TP (Silvex)	3.45	NLFG	NLFG	NLFG	14.4
Vinyl chloride	1.38	NH	1E-5/hr	1E-7/hr	14.4

[1] Logarithm of the octanol/water partition coefficient.
[2] Acid, base and neutral hydrolysis rate constants.
[3] Dilution/attenuation factor derived from ground water transport system.
[4] NHYF = No Hydrolyzable Functional Group.
[5] NH = Negligible Hydrolysis.
[6] NLFG = No Liable Functional Group.
[7] Estimated value.

In the monte carlo simulation, values for each parameter are based upon the frequency distribution for each parameter (where such data exists) rather than the selection of a single value for each parameter. The model is then run a sufficient number of times (typically several thousand) to produce the frequency distribution of the model's output. This overall frequency distribution is, effectively, a combination of the frequency distributions for each individual parameter. This approach avoids the compounding effects of conservatism inherent in choosing single, reasonable-worst-case values for each parameter. Monte carlo simulation was chosen as the preferred method to analyze the full range of possible environmental conditions for the land disposal scenario. The wide range of environmental conditions (e.g., ground water velocities, pH, temperatures, exposure point locations) that can exist in locations across the nation where the wastes in question may be disposed precludes *a priori* specification of a reasonable worst case for these parameters. Another important reason to use the monte carlo method is the very complex manner in which the many model variables and parameters interact. Unless many (hundreds to thousands) combinations of variables are investigated, it is simply not possible to anticipate those physical settings that lead to unacceptably high exposure levels. Accordingly, the monte carlo method was chosen to ensure that a conservative but not physically unrealistic or impossible analysis was completed.

The EPASMOD, as described in the proposed rule, was based on a number of key assumptions pertaining to the features of ground water flow, properties of the porous medium, and the behavior of hazardous wastes in ground water. These assumptions included the following:

- Saturated soil conditions (no attenuation of chemicals in the unsaturated zone);
- Flow regions of infinite extent in the longitudinal direction, semi-infinite extent in the lateral direction, and finite in the vertical direction;
- Aquifer can be characterized by homogeneous and isotropic properties and the aquifer thickness is constant;
- Ground water flow is uniform and continuous in direction and velocity;
- Degradation is limited to hydrolysis and the by-products of hydrolysis are assumed to be nonhazardous;
- Contaminants follow a linear equilibrium adsorption isotherm;
- An infinite source supplies a constant mass flux of chemical into the aquifer;
- Recharge due to precipitation supplies water to the disposal unit and the aquifer;
- The ground water upstream of the disposal site is initially free of contamination;
- The receptor well is directly in line with the source and the ground water flow direction;
- The receptor well is located 500 feet from the unit; and
- Hydraulic conductivity does not vary with temperature.

In the June proposed rule, the Agency also proposed using the 85th cumulative percentile level of the back-calculated dilution attenuation factors obtained using the monte carlo simulation technique as an appropriate regulatory level for the TC. Selection of this level means that downgradient

concentrations will not exceed the allowable health-based concentrations in more than 15 percent of all possible analyzed settings of subtitle D disposal units. (This proposal referenced other proposals dealing with the ground water transport model, such as the January 14, 1986 Land Disposal Restrictions notice, and notices published by the delisting program; relevant comments received in response to those notices are also discussed in this rulemaking.)

b. *August 1, 1988 Notice of Data Availability and Request for Comments; Supplement to Proposed Rule (52 FR 28892).* On August 1, 1988, the Agency presented new data related to subtitle D municipal landfills, soil characteristics, and chemical-specific hydrolysis rates to be used with the subsurface fate and transport model to calculate DAFs for each of the organic constituents in the TC. These new data became available to the Agency after the June 13, 1986 proposal. The August 1, 1988 Notice also requested comments on several major revisions to EPASMOD that were being considered by the Agency, subsequently referred to as EPA's Composite Model for Landfills (EPACML). As a result of comments received on the January 14, 1986, and June 13, 1986 proposals, as well as the August 1, 1988 Notice, the Agency has used EPACML to support the choice of appropriate DAFs for this rulemaking.

These modifications and data are described in greater detail below (section III.E.2). The reader is referred to the Response-to-Comments Background Document for the Subsurface Fate and Transport Module (Ref. 1), which presents, in detail, each of the technical issues addressed in the public comments on the model and the Agency's response to these issues.

2. Modifications of the Subsurface Fate and Transport Model (EPASMOD) in Response to Comments

In today's rule, the Agency has used EPACML to estimate the attenuation and dilution of specific constituents during their migration through the unsaturated zone beneath a municipal landfill and their transport through the saturated zone to a potential drinking water source (exposure point). EPACML accounts for dispersion in the longitudinal, lateral, and vertical directions; one-dimensional steady and uniform advective flow; sorption; and chemical degradation from hydrolysis. The major enhancements that were made to EPASMOD to produce EPACML, the substantive comments that led to these changes, and important assumptions made to develop analytical solutions are described in subsection (a) below.

In addition, the Agency used the EPACML model to corroborate its conclusions on dilution/attenuation factors for surface impoundments. For this exercise, data inputs typical of surface impoundments rather than landfills were used. These procedures are described in subsection (b) below.

a. *General Modifications*—i. *Unsaturated Zone.* The EPASMOD model discussed in the June 13, 1986 proposal assumed that there was no unsaturated zone (i.e., the bottom of the landfill is directly connected to the top of the aquifer). Several commenters stated that the assumption that the facility is located directly at the top of the saturated zone is unrealistic because an unsaturated zone usually exists above the aquifer and that retardation, dilution, and degradation effects in the unsaturated zone should be considered. The commenters also suggested that, when incorporating the unsaturated zone, the depth to the water table should be incorporated as part of the monte carlo analysis.

The Agency is in agreement with the commenters and has now included an unsaturated zone as part of the subsurface model. The Agency believes that this modification to the model is reasonable, based in part on a survey of existing municipal landfills that indicated that an unsaturated zone exists beneath 95 percent of the surveyed landfills. Incorporating an unsaturated zone into the model accounts for any retardation and degradation of chemicals in the unsaturated zone and provides a more realistic scenario.

To account for the unsaturated zone, the Agency developed unsaturated zone flow and transport modules and implemented them using the monte carlo (probabilistic) framework that has already been used in conjunction with the saturated zone modeling approach in EPASMOD; these unsaturated zone modules are incorporated into EPACML. The input concentration to the unsaturated zone transport module of EPACML corresponds to the leachate concentration at the bottom of the landfill.

The unsaturated zone model was reviewed by EPA's Science Advisory Board (SAB). The SAB endorsed the use of the model for applications for the development of regulations; however, the SAB recommended that it not be used for site-specific applications because the model has limitations imposed by the simplifying assumptions (those necessary for regulatory use), and the limitations of the use of site-specific data. The unsaturated zone model consists of two modules: a flow component and solute transport component. These two components were developed in a form to allow for their incorporation in the monte carlo simulation. The major assumptions and consequences of the flow module are:

- *Flow is steady in the vertical direction, and lateral and transverse movement of the leachate is negligible.* Because there is little or no lateral flow in the unsaturated zone, these assumptions are appropriate. In any case, this procedure will tend to maximize the concentration of leachate leaving the unsaturated zone and therefore represents a conservative assumption.
- *No vapor phase or immiscible liquid flow occurs, and the water phase is the only flowing material.* EPA acknowledges that some constituents in some situations may undergo phase shifts and be emitted in vapors. Because this rule is essentially directed to risks from drinking water and because of the uncertainties in accurately computing emissions and their relationship to the currently available leaching tests, this conservative assumption was adopted. Under certain conditions, particularly very high constituent concentrations, immiscible liquid flow can occur. For such situations, the model's inability to account for the immiscible flow condition may lead to higher downgradient concentrations (i.e., the model would underestimate the receptor well concentrations).
- *Flow is isothermal (not affected by temperature variations).* In reality, temperature variations at any given site are not dramatic because the source of infiltrating liquid is precipitation. Thus, this assumption is not expected to influence the results to any appreciable degree.
- *Effects of variations in the unsaturated zone hydraulic properties caused by alternating moisture conditions are negligible (i.e., hysteresis effects).* Many soils, especially the more porous ones for which infiltration rates are high, do not present important hysteresis effects. In other cases, little and often no data are available to characterize the effects. Failure to include hysteresis is not expected to affect the results to any appreciable extent.
- *The flow field is uniform and continuous in direction and velocity.* Precipitation-driven infiltration can be a dynamic process where much of the vertical movement occurs during relatively short periods of time. Time-

averaged values of infiltration derived from dynamic water balance calculations (as described in the Background Technical Support Document) are often used to enable solution of analytical, steady-flow models. The unsteady-flow conditions could lead to higher downgradient concentrations than predicted by EPACML. However, the effect is expected to be significant only for rapidly degrading constituents. For the constituents regulated in this rule, no appreciable impact is expected because none of the constituents are expected to hydrolyze to any significant extent during transport.

• *The unsaturated zone is homogeneous and isotropic.* This assumption is typically required to enable mathematical solutions amenable to exhaustive sensitivity analyses and monte carlo implementation. In any one application (one model run) of this assumption, the result can either under- or over-predict downgradient concentrations. The monte carlo implementation, however, results in a very wide range of possible conditions, and thus the total analysis, when taken together, accounts for a wide variety of unsaturated zone conditions.

The major assumptions and consequences of the unsaturated zone transport module are:

• *Chemical transport is vertical; lateral and transverse movement of the chemical is negligible.* This follows from the first assumption for the flow module described above.

• *Chemical sorption is modeled as a reversible, linear equilibrium process.* This is a standard modeling assumption which is accurate for systems having relatively low solute concentrations, and conservative at higher concentrations.

• *Degradation is limited to hydrolysis.* This assumption was made to be consistent with the similar approach adopted for the saturated zone. Thus, the model includes only those degradation mechanisms that can be reliably characterized in laboratory studies of each individual constituent. This assumption remains a major conservative component of the overall model.

• *Chemical transport in the vapor phase has been assumed to be negligible.* This follows from the second assumption for the flow module described above.

• *The unsaturated zone transport model is solved for the steady-state condition.* This is a conservative assumption that has been investigated for its impact on all the originally proposed constituents. The extent to which this assumption is appropriate is discussed in section III.E.4(b)(iii).

The details of the unsaturated zone module are provided in the background documents (Ref. 1, 9), which also describe the data sources and analyses that were performed to obtain the data distributions.

ii. Source Characterization. In EPASMOD, the input leachate to the saturated zone was assumed to be instantaneously mixed in the vertical direction over a pre-specified depth of source penetration, and the concentration in the leachate was equal to the maximum source contaminant concentration in the saturated zone below the facility. Mass balance considerations required that the lateral extent of the leachate directly underneath the facility be adjusted to ensure that leachate was neither gained nor lost in the transition from the facility (or unsaturated zone) to the aquifer. A number of commenters criticized the treatment of the source. A major concern was that the method was inadequate because of an overly conservative assumption, which equated the concentration of the contaminant in the saturated zone to the landfill leachate concentration. Thus, commenters argued that EPA had not given adequate consideration to mixing and dispersion under the landfill. The commenters also pointed out that this treatment of the source could result in modeling physically unrealistic boundary conditions (e.g., by modeling a source of small cross-sectional area with a very large width of the Gaussian source, and vice versa).

The Agency agrees with the commenters that the method used to characterize the source-boundary conditions for the saturated zone transport needed to be improved. Thus, the method has been revised to consider the mass balance requirements, geometrical configurations, and physical processes that are occurring in the mixing zone below the facility and within the saturated zone. An important characteristic of the revised method is the plume restriction in the lateral extent. That is, the method no longer permits physically unrealistic situations where the plume source width exceeds the facility width. In addition, the current method of computing the source-boundary conditions represents the mixing and dilution effect on the leachate below the source and ensures that the concentration of the contaminant in the saturated zone will be less than or equal to the landfill leachate concentration.

iii. Treatment of Dilution from Recharge. In EPASMOD, the dilution effect of ground water recharge on contaminant transport in the saturated zone was taken into account by including recharge as a dilution term in the governing equation. Dilution of leachate concentrations from recharge was calculated by dividing the infiltration (recharge) rate by the source penetration depth. A number of commenters were concerned that the influence of recharge on the ground water flow field had not been properly accounted for in the model. In addition, several commenters alerted the Agency to an error in the equation used to evaluate the recharge dilution parameter.

In response to these comments, the Agency has modified the model to calculate dilution from recharge by dividing the recharge rate by the total saturated thickness of the aquifer, the aquifer porosity, and the effective retardation factor in this zone. This revision represents a more realistic assessment of the dilution potential of recharge by considering changes in the entire volume of water in the contaminated aquifer and the effectiveness of contaminant and recharge flow and mixing in the aquifer.

The Agency recognizes that recharge effects on ground water flow fields are not rigorously considered in the model and that the assumption of uniform, constant, horizontal ground water velocity neglects the possible effects of local mounding of the water table underneath the land disposal unit. However, the constant velocity assumption can be interpreted as an averaging of the velocity field over the spatial area affected by recharge; in addition, the uniform, horizontal flow assumption was necessary to make the three-dimensional transport equation analytically solvable. The effect of recharge on ground water velocity is difficult to account for directly in the model. To assist in the analysis, EPA has conducted a sensitivity analysis comparing EPACML results with recharge effects as predicted by a two-dimensional numerical model that rigorously accounts for recharge. The results (which can be found in Ref. 9) indicated that as long as recharge values are significantly less than the natural flow velocity, there was no major effect on the ground water flow fields. Based on this analysis, and on evidence of typically low rates of ground water recharge, the Agency believes that the revised treatment of the dilution effect from recharge is reasonable. In addition, the error, as pointed out by several commenters, in the equation used to evaluate the recharge dilution

parameters was corrected, and the correction is included in EPACML.

iv. Location of the Receptor Well. In EPASMOD, the receptor well was assumed to be located downgradient from the landfill along the centerline of the plume (direction of ground water-flow) at a fixed distance of 500 feet (152.4 m). In addition, the receptor well was assumed to be tapping water from the top of the aquifer, and no mixing of water in the well or effects of drawdown in the well were considered in EPASMOD.

Many commenters argued that the assumptions concerning the location of the receptor well were too conservative and suggested that well locations should be considered in a probabilistic manner as part of the monte carlo simulation in the model. These commenters noted that well locations other than on the centerline should be considered. Several commenters also stated that the well locations should not be restricted to lying within the areal extent of the plume and suggested that wells located outside of the plume should be considered in the calculation of the dilution/attenuation factors.

The Agency agrees that the proposed location of the well was unrealistic and that affected wells located at points other than on the centerline should be considered. Therefore, the model now considers well locations anywhere within the areal extent of the contaminant plume. In order to incorporate these locations, a distribution of distances to downgradient wells was developed based upon a subtitle D municipal landfill survey (Ref. 6). These distances were used as part of the monte carlo analysis. Also, to incorporate locations other than on the centerline, the Y values (see Figure 1) were selected randomly over a 180° domain but the X–Y pairs were constrained to values that were located within the areal extent of the plume.

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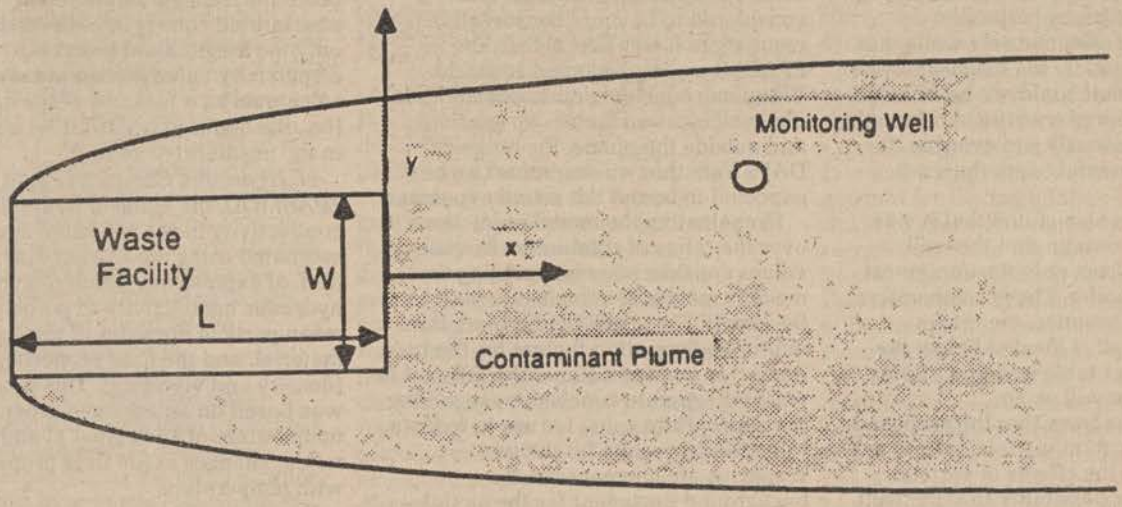
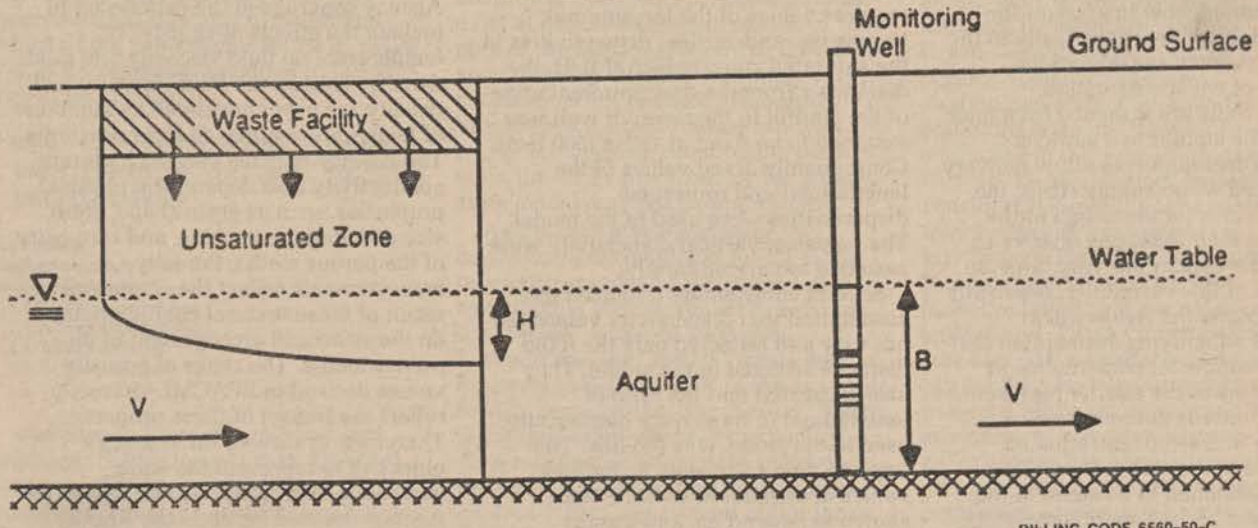
FIGURE 1

A SCHEMATIC OF THE WASTE FACILITY SOURCE BOUNDARY CONDITION AND LEACHATE MIGRATION THROUGH THE UNSATURATED AND SATURATED ZONE

PLAN VIEW



SECTION VIEW



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The Agency disagrees with those commenters who stated that well locations outside of the areal extent of the plume should be considered. The purpose of the Toxicity Characteristic is to answer the question "if the management of this waste continues to be uncontrolled, what are the consequences in terms of human exposure via ingestion of contaminated drinking water?" In performing the exposure assessment to answer this question, the Agency believes it appropriate to consider only wells that could be affected by the disposal of the waste. Wells that could not be affected by the migration of constituents from the wastes are obviously irrelevant to the exposure assessment and, thus, not considered.

Commenters also stated that it was unrealistic to assume that the well tapped water from only the uppermost point of the aquifer. These commenters stated that, in practice, the intake portion of a well is located below the top of the water table and that mixing and drawdown will occur.

The Agency agrees that the proposed well intake location was unrealistic and that it ignored the effects of vertical mixing and the possibility that the well intake would likely be at some point other than the top of the aquifer. In response, the assumption has been modified to consider well intake at any point throughout the depth of the aquifer. This modification largely takes into account the above-described mixing and drawdown effects.

In determining how to account for well drawdown more realistically in the model, the Agency considered the mechanics of well construction. Generally, wells are screened from near the top of the aquifer to a sufficient depth (into the aquifer) to allow delivery of the needed water supply. Thus, the ranges of values for the length of the screens and their locations relative to the top of the aquifer are very large. In recognition of this variability, especially in screen length, the Agency has employed a simplifying assumption that the concentrations of constituents at various depths of the aquifer represent the concentrations at the exposure point. That is, the concentration of constituents in the water drawn from the well is assumed to be equal to the concentration of the constituents at the depth which is selected in the monte carlo simulation. (The well depth is randomly selected from all points within the vertical range of the aquifer's thickness.)

To evaluate the model's sensitivity to this assumption, the Agency evaluated the case in which wells were assumed to be screened from the top of the aquifer to the monte-carlo-selected depth. The exposure point concentration was then calculated as the average concentration over the screened depth. This case is considered to be more representative of the most likely well design, although in many cases the well will not extend to the bottom of the aquifer nor will it always be constrained to intersect the plume as is implemented in the monte carlo simulation. This scenario is considered to be more conservative (i.e., resulting in lower DAFs) than the EPACML-as-implemented scenario. When one considers other possibilities like well location factors up gradient and outside the plume, the range of DAFs from the two scenarios can be expected to bound the actual exposures.

In evaluating the model predictions over the range of cumulative frequency values considered in interpreting the model's results in today's rule (see Section III.E.4—DAF Evaluation), the dilution/attenuation factors for the two scenarios are not sufficiently different to warrant separate conclusions regarding the appropriate value for use in today's rule. (Model results for the two scenarios are compared in the background document for the model—Ref. 9.)

v. Dispersivity Values. Dispersivity controls the degree of spreading of dissolved contaminants in the subsurface. The saturated-zone fate and transport model includes dispersion in the longitudinal, transverse (horizontal), and vertical directions. The model thus requires values of the longitudinal, transverse, and vertical dispersivities in the saturated zone. In EPASMOD, the distance x from the downgradient edge of the landfill to the receptor well was assumed to be fixed at 152 m (500 feet). Consequently, fixed values of the longitudinal and transverse dispersivities were used in the model. The values of vertical dispersivity were assumed to vary uniformly.

Several commenters criticized the assumption that dispersivity values did not vary and reflected only the fixed distance selected in the model. They also suggested that the ratio of longitudinal to transverse dispersivity used in the model was too low. The basis of their comments is that field values of dispersivities have been shown to depend on, and usually increase with, the travel distance.

The Agency agrees with the commenters and now calculates the three components of dispersivity based on a detailed analysis of data gathered from field tests (the model background document [Ref. 9] presents a detailed discussion on dispersivity values and provides references to the field data). The Agency believes that the revised approach, reflecting the distance-dependent nature of the dispersivity values and different relationships between the dimensional dispersivities, is more realistic and consistent with the available data.

EPACML also requires the specification of a dispersivity parameter for transport in the unsaturated zone. Since the transport equation in the unsaturated zone is one-dimensional, only the longitudinal (vertical) dispersivity value is required and is calculated as a function of the distance (i.e., the depth to water table) traveled in the unsaturated zone.

vi. Hydraulic Conductivity. In EPASMOD, the value of hydraulic conductivity in the saturated zone was estimated using the Kozeny-Carmen (Ref. 9) expression, which relates hydraulic conductivity to porosity, the mean particle diameter of the aquifer material, and the fluid properties (density and viscosity). This relationship was based on an assumed ground water temperature of 15 degrees C and did not reflect changes in the fluid properties with temperature.

Commenters expressed concern with this assumption because ground water temperature is known to typically range in temperature from 4 degrees C to 30 degrees C. A few commenters also expressed concern regarding the validity of using this empirical relationship.

In response to these comments, the Agency generalized the expression to include the effects of changes in temperature on fluid viscosity and fluid density. That is, the fluid viscosity and density are now considered as functions of temperature rather than as constants. The Agency realizes that the hydraulic conductivity also depends on physical properties, such as grain shape, grain size distribution, packing, and tortuosity of the porous media. Porosity measurements reflect the composite result of these textural characteristics on the structural arrangement of the porous media. The range of porosity values derived in EPACML indirectly reflect the impact of these properties. Therefore, in view of the Agency's objective to represent the wide variations expected from site to site, the Agency decided to retain the Kozeny-Carmen equation, except for the modification described above.

vii. Hydrolysis. As already discussed in section III.E.2., the EPACML model accounts for reduction in constituent concentrations due to hydrolysis. This results in higher DAFs for constituents that hydrolyze during transport than for

constituents that do not. The DAF predicted by the model for some of these constituents ranges up to one million. Thus, in some cases, wastes would not be considered hazardous unless they contain large amounts of these toxicants; still, in other cases, no amount of toxicant in the waste would define it as hazardous under this scenario. Therefore, the Agency did not believe it appropriate to include these constituents in the TC (see Table E–2 for list of constituents that appreciably hydrolyze). Furthermore, the model does not account for the degradation products that are produced as the original constituents hydrolyze. That is, while the decrease in the concentration of the original constituent is accounted for, the resultant increase in concentration of the hydrolysis products is not. Several commenters stated that the toxicity and transport of the potential hydrolysis products should be considered to fully assess the hazards posed by the constituents that hydrolyze.

The Agency agrees with the commenters and is (1) determining which byproducts result from hydrolysis and (2) developing an appropriate protocol for predicting the concentration of hydrolysis byproducts (see Table E–2). Once this protocol is developed, the Agency will determine whether any of these toxicants should be added to the list of constituents. While the Agency considered including these constituents at a higher dilution and attenuation factor until this work was completed, the Agency does not have sufficient information at this time to determine which of the constituents listed in Table E–2 will eventually be added to the TC and at what level.

TABLE E–2—HYDROLYZING CONSTITUENTS LISTED IN THE JUNE 13, 1986 PROPOSED RULE

Acrylonitrile
Bis(2-chloroethyl) ether
Methylene chloride
1,1,1,2-Tetrachloroethane
1,1,2,2-Tetrachloroethane
1,1,1-Trichloroethane
1,1,2-Trichloroethane

viii. Steady-State Assumption. As implemented for today's rule, EPACML was solved for the steady-state condition. Thus, the solution represents the case where leaching has occurred for a period of time that is sufficiently long to allow the concentration at the receptor well to become constant. Several commenters noted that, in certain circumstances, use of the steady-state solution would lead to unreasonably low DAFs. In particular, in situations where the mass of a constituent is relatively low in the source facility (i.e., the landfill has a very limited quantity of the constituent available to contaminate leachate), the steady-state model will continue to assume the existence of a very large quantity of the constituent and, hence, over-predict the resulting concentration at the downgradient well. Under such circumstances, the commenters argue, the Agency should accommodate this phenomenon by using a transient solution in deriving appropriate DAFs.

The Agency agrees with the commenters and has initiated a study to thoroughly investigate the problem described above. Based upon preliminary investigations already complete, however, the Agency continues to believe that application of the steady-state model to many constituents is appropriate and is promulgating regulatory levels for those constituents based upon the results of the steady-state model. The preliminary investigations have also led to a decision to postpone the promulgation of regulatory levels for constituents that are believed to be more appropriately evaluated with a transient solution. The Agency is continuing to refine the approach required to implement the transient solution but results to date suggest that this latter group of constituents require unreasonably large quantities in the source facility to insure that the steady-state solution is appropriate. For example, under some conditions even when the constituents exist at concentrations in excess of 1000 ppm of the solid waste within the entire volume of the landfill, the steady-state condition is not realized. Therefore, based upon the preliminary analysis, regulation of these constituents based upon the DAFs predicted by the steady-state model may not be appropriate.

Preliminary investigation of this condition was completed for all of the originally proposed constituents. All constituents were assumed to exist in the "tested" waste at 1000 ppm. Furthermore, the "tested" waste was assumed to occupy 100% of the available facility capacity (i.e., the "tested" waste is the only solid waste in the facility). As a reasonable worst case scenario, the DAF was derived by the transient model for each constituent under these conditions. Because the above assumptions are very conservative, most of the DAFs derived for the constituents were found to coincide with the steady-state values. That is, sufficient mass was available to insure that steady-state conditions were reached. Accordingly, regulatory levels for these constituents are being promulgated in this rule. For the following constituents, however, the steady-state condition was not achieved under this scenario:

phenol
1,2-dichlorobenzene
carbon disulfide
isobutanol
2,3,4,6-tetrachlorophenol
toluene

Accordingly, the Agency is postponing the promulgation of regulatory levels for these six constituents until such time as the investigations are complete. Once these investigations are completed, the Agency will take the appropriate action.

ix. Biodegradation. The subsurface fate and transport model does not account for biodegradation processes in the subsurface environment. EPA recognizes, however, that biodegradation is an important process that can reduce concentrations under either aerobic or anaerobic conditions. Accordingly, the EPA has constructed the model so that it can theoretically be modified to include these processes for experimentally derived biodegradation rates. Biodegradation processes have not been included because the data bases to support this portion of the model are currently insufficient.

The first major data deficiency is that the model incorporates many diverse subsurface environmental conditions where as constituent-specific biodegradation rate data typically exist for only a few (if any) subsurface environments. EPA also recognizes that although the kinetic equations describing the degradation of hazardous organic chemicals in many environments are available, these equations have not been sufficiently evaluated in the subsurface environment (Ref. 10, 11, 12). Second, the Agency considers data on the formation of transformation products to be insufficient. Third, the key processes that can affect the subsurface biodegradation rate are not well understood. These processes include sorption, pH, temperature, nutrient availability, toxicity, and others. For example, while nutrient levels in the environment are generally considered sufficient for low populations of microorganisms, the microorganic population at which the nutrient availability in the environment becomes a limiting factor is not known. Additionally, while sorption is well understood for hydrophobic compounds at low concentrations (Ref. 13), at concentrations where the compounds can form small droplets or become entrained in the micropores of the

subsurface matrix, sorption effects are not well understood. The effects of temperature have been characterized in innumerable studies of isolated microorganisms, but the kinetics of these effects have only recently been investigated in environmental samples (Ref. 14). Finally, the toxicity of hazardous chemicals to the microorganisms themselves is only now being investigated (Ref. 15).

Accordingly, the Agency is continuing to gather data to refine the modeling of biodegradation, but has not been able to include biodegradation in the ground water transport model at this time. In this regard, EPA has published guidelines for developing anaerobic microbiological biodegradation rate data for chemicals in the subsurface environment (see 40 CFR 795.54). Results developed under these guidelines will provide data on kinetic rates of degradation, and to a lesser extent, on the effects of pH and temperature on these rates. Similar guidelines have not been developed for aerobic systems at this time. Data developed under 40 CFR 795.54 may be considered for use in the model at some future time.

x. Summary of General Modifications. The Technical Background Document (Ref. 9) describes in detail the model revisions, including options developed but not implemented for the purposes of establishing the regulatory levels for today's rule. A summary of the major model options and procedures implemented for the rule follows:

- The model was run for the steady-state case. The initial condition was a constant concentration. The equations were solved for infinite time.
- The unsaturated zone module was included in the analysis.
- Concentrations can be predicted at wells placed at any position. The wells can be allowed to draw from any selected depth.
- The updated method of computing dispersivities as a function of random longitudinal well locations was used (designated in the model as the "Gelhar procedure").
- The option implemented for setting the boundary conditions between the unsaturated zone and the aquifer was the one that limits the lateral extent of the plume to the downgradient facility width, computes vertical mixing and dispersion underneath the facility, and estimates the maximum source concentration within the plume based on mass balance requirements. Any combination of conditions that violated these requirements and, thus is not physically realistic, was rejected.

The above options and additional options are listed in the background document for the model (Ref. 9). Specifically, the model input and control variables, as required and accepted by the computer code, are listed for each computer run used to set regulatory levels in today's rule.

By incorporating these modifications, the EPACML, as applied to landfills, models the following basic features:

- The landfills are filled to capacity and covered with native soil.
- Caps are characterized as being in a failed or deteriorated state. Thus, permeabilities are set to be higher than would be typical of landfills with an undamaged cap. It is assumed that liners are not present.
- All wells (exposure points) are considered to be downgradient in every model run. The longitudinal distance parallel to the direction of ground water flow is determined from data described later in section III.E.3.
- Lateral well location is determined by allowing the position to uniformly vary at random within the plume width and with the additional constraint that the location also must be within an area defined by lines at 90-degree angles from the direction of ground water flow at the midpoint of the downgradient boundary of the facility.
- Vertical well location is determined by allowing the position of the well intake point to uniformly vary at random over the entire aquifer depth.
- The landfill storage capacity is assumed to be sufficient to accommodate sufficient mass of each constituent to allow a steady-state condition to exist. This produces an infinite source initial condition.
- Constituents contained within the landfill do not degrade.
- Infiltration rates are represented as annually averaged flows based on 20-year climatic records and concomitant water balance calculations.

b. Use of the EPACML for Surface Impoundments. Because some wastes are managed in surface impoundments rather than landfills, several commenters indicated the need to analyze and include the results obtained by considering a surface impoundment mismanagement scenario. They argued that dilution/attenuation factors (DAFs) generated by modeling a landfill scenario would be too stringent for wastes managed in surface impoundments. Based upon these comments, the Agency decided to investigate whether surface impoundment DAFs would be significantly different from landfill DAFs. EPA requested comment on the use of this data in the August 1, 1988 notice.

Based upon this investigation, the Agency has concluded that the use of DAFs based on a landfill scenario is appropriate in establishing the regulatory levels for wastes managed in surface impoundments. EPA used the EPACML model to confirm this analysis by modeling a surface impoundment mismanagement scenario.

This conclusion is based on the Agency's evaluation of the physical parameters that would lead to different DAFs for surface impoundments than for landfills. A key factor that could lead to differences in the DAFs from these two types of management units (surface impoundments and landfills) is the difference in total leachate infiltration rates. The infiltration rate is equal to the product of the leachate mass flux (mass per unit area per unit time) and the area of the management unit. For surface impoundments, the mass flux can be considerably greater than for landfills. However, to the extent that the area of surface impoundments is typically smaller than the area of landfills (although some atypical surface impoundments can be as large, if not larger than landfills), the effects of the greater leachate flux are somewhat offset. That is, while the flux is greater, the area is smaller, resulting in relatively similar leachate infiltration rates.

A second factor that affects the DAFs is the situation in which the leachate flux is large and the ground water velocity is relatively small. In these situations, a ground water mound may form below the management unit. This effect is more typically associated with surface impoundments because of their higher leachate fluxes; this effect should result in smaller DAFs (and, thus, more stringent regulatory levels) than would be predicted if the mounding did not occur. As a result of these factors, the Agency concluded that DAFs from a surface impoundment scenario would be equivalent to or less than DAFs from a landfill scenario.

To confirm this conclusion, EPA used EPACML to evaluate a surface impoundment scenario. The main features of the surface impoundment scenario, as simulated using EPACML, are as follows:

- The surface impoundments are filled to their fluid capacity and are assumed to operate on a continuous basis.
- Bottom layers are characterized as being in a more permeable state (typically ten times greater) than those found in field studies.
- Location rules for downgradient well positions and lateral and vertica'

locations are identical to landfills. The data base for longitudinal distances is different, however.

- The operating life of the surface impoundment is assumed to be sufficient to accommodate a sufficient mass of constituent to allow a steady-state condition to exist. This assumption produces an infinite source initial condition.
- The leaching rate from a surface impoundment depends on, among other factors, the ponding depth in the impoundment and the characteristics of the bottom materials. The Hydrologic Evaluation of Landfill Performance (HELP) model used in evaluating the landfill data is inadequate to determine the leaching rates from surface impoundments. Therefore, the leaching rates from subtitle D surface impoundments were estimated by considering the relationship between the velocity in the vertical direction and the substrate's porosity and permeability and the solution of the nonlinear steady state flow problem. To be conservative, the Agency used a permeability value ten times higher than the value typically reported in field studies as an input for calculating leaching rates (the source of these data are discussed below).
- The Agency has not yet conducted a detailed survey for subtitle D surface impoundments, but the Agency conducted a review and analysis of data on subtitle D units in RCRA Facility Assessment (RFA) Reports (Ref 16). A set of data on subtitle D surface impoundments was obtained from this analysis and used as inputs to the EPACML. Additional data were compiled from aerial photographs by EPA's Environmental Photographic Interpretation Center (EPIC).
- The data extracted from RFSs included the area of the surface impoundments and the distance to downgradient drinking water wells as determined by EPIC.
- The ponding depth data for the subtitle D surface impoundments were reported by E. C. Jordan (Ref. 9). The hydraulic conductivity of the bottom materials was chosen as 1.0 E–6 cm/sec. This value reflects the effect of gradual settlement and compaction of sediments at the bottom, because surface impoundments tend to fill up with sediments over a period of about 20 years or so. The Agency believes that the hydraulic conductivity value of 1.0 E–6 cm/sec represents a reasonable worst-case value. These values were used in conjunction with EPACML to estimate DAFs for the surface impoundment data.

As expected, DAFs predicted for surface impoundments are somewhat smaller than the corresponding values for landfills (see section III.E.4). However, because the EPACML does not incorporate the mounding effect, the surface impoundment evaluation was restricted to include only those cases where mounding would be minimal and, thus, reasonably ignored. As a consequence of limiting the evaluation to these cases, the modeling results tend to omit some worst case scenarios. That is, if all possible cases were included, rather than just the "no mounding" cases, the DAFs for surface impoundments could be somewhat lower and, thus, the downgradient concentrations may be higher than those estimated by the EPACML model. The Agency thus believes that the omitted surface impoundment conditions should be further investigated and may result in more stringent regulatory levels. The Agency believes, however, that the DAFs produced by the EPACML analysis properly delineate wastes that are clearly hazardous wastes.

3. Newly Acquired Data

As previously described, the DAFs proposed on June 13, 1986, were calculated based on the subtitle D landfill scenario. However, subtitle D landfill data were not available to the Agency at that time, and instead, subtitle C landfill data were used.

Several commenters criticized the use of subtitle C (hazardous waste) landfill data. The Agency agreed with the commenters and has based the final rule on data from a survey of solid waste subtitle D landfills.

a. Landfill Data. The Agency conducted a survey of municipal solid waste landfills in the U.S. (Ref. 6). The survey used a stratified design based on facility size. The results were tabulated based on 1,102 completed questionnaires. The survey yielded data on area of landfills, distance to the nearest downgradient drinking water wells, and thickness of the unsaturated zone. These data are site-specific, corresponding to individual solid waste landfills located throughout the United States. The survey data were analyzed to develop distributions of these site-specific parameters and used as inputs to EPACML, as described in the model background document (Ref. 9). The input frequency distributions are also presented in the background document.

EPA also collected additional data on leachate generation at municipal landfills. EPASMOD requires, as input, the leachate distribution from the bottom of the landfill. The leaching rate distributions for the June 13, 1986, proposal were based on the use of a single soil type, loam, as the cover soil for the landfill. These distributions were estimated using climatologic data for a total of 30 cities nationwide, representing the median range for each of 18 climatological conditions or zones identified in the 48 contiguous states.

The assumptions of a single soil type and 18 climatic zones were criticized as not being realistic and resulting in an overly optimistic cap performance. The commenters suggested enhancing the data base by including simulation of different soil covers.

In response to these comments, the Agency has implemented a number of changes. The Agency believes that these modifications significantly improve the validity of the leachate flux distribution and make it more realistic.

Soil Type

The Soil Conservation Service (SCS) has a county-by-county soil mapping program underway. More than 90 percent of the land area in the U.S. has been mapped, and soil data representing approximately 51 percent of the total land area in the U.S. have been entered into a computer data base. Using this data base, the soil classifications were grouped according to the U.S. Department of Agriculture's definitions of coarse, medium, and fine textures. These three categories are represented in EPACML by soils equivalent in properties to sandy loam, silt loam, and silty clay loam for the landfill cover materials. The latest results show that coarse grained soils, medium grained soils, and fine grained soils represent 15.4, 56.6, and 28.0 percent, respectively, of the soils that have been mapped thus far.

Climatic Zones

The number of cities representing climatic variations that were used to develop frequency distributions for the leachate generation has been increased from 30 to 100. The reason for this change was to reduce the chance that any one city would provide an unrepresentative percolation rate in its climatic range.

The climatic data base used in EPACML was enhanced to include six precipitation ranges and five ranges of pan evaporation rates, thereby resulting in 30 climatic ranges as opposed to the 18 described in the earlier proposal. For the climatic ranges so defined, the percentage of the area of the 48 states represented by each range was calculated, and the percent areal average was used to weight the percolation (recharge and/or infiltration) rate estimated for the selected cities in each range according

to probable relative occurrence in the U.S. The effect of these changes is to provide more representative values of the overall national distribution of the leachate flux.

After the percolation data for the landfill were calculated using the HELP model (Ref. 9), the climatic ranges were further subdivided to account for wide variations in percolation within a range. This resulted in separate subranges being established for some California cities (Los Angeles, Sacramento, San Diego, and Santa Maria), and two Oregon cities (Medford and Astoria).

Percolation rates for each of the selected cities in the 48 contiguous states were determined using silt loam, sandy loam, and silty clay loam cover soils. These soils, based on data obtained from the SCS, appear to represent the most common soil types in the U.S., and thus the most common soil to be used as covers for landfills. They also span the range of likely cover soils, from fine-grained to coarse-grained, or from low to high percolation rates. Simulations were performed for each of these soil types, and the results weighted according to the frequency of occurrence for each type.

The leaching rate flux was determined by using the average, weighted percolation rate from the cities in each climatic range. The model background document (Ref. 9) presents the data used and the accompanying changes to the June 13, 1986 proposal runs.

b. Chemical-Specific Parameters. In the EPASMOD proposal, chemical parameters, such as hydrolysis rates, were used to calculate the relative retardation factors and degradation rates for selected compounds. Some of the chemical-specific parameters used in that model were estimated based on a brief review of the existing chemical data. Some commenters criticized some of the parameter values selected and used for that proposal as being nonrepresentative of the range of parameter values.

The Agency has an ongoing program for the measurement of constituent-specific parameters and for the review of new constituent-specific data as reported in the current scientific literature. Some hydrolysis rate constants and octanol-water partition coefficients used in the proposal have been revised to reflect the most recent laboratory measurements and recent values reported in the literature. The updated parameter values are given in the background document (Ref. 9) and represent either measured or best available values.

4. DAF Evaluation

a. Selection of an Appropriate Percentile. As described earlier, the EPACML was used to investigate the expected range of DAFs associated with mismanagement of solid wastes. As generated by EPACML, the DAF represents the expected reduction in the concentration of a constituent during transport through soil and ground water from the leachate release point (bottom of the waste management unit) to an exposure point (a well serving as a drinking-water supply). The wide range of possible environmental settings (e.g., ground water velocities, pH, temperatures, etc.) and the multitude of possible scenario configurations (e.g., facility area, distance to downgradient wells, etc.) result in an extremely wide range of DAFs. Monte carlo simulation was used to implement EPACML, and the resulting cumulative frequency distribution can be viewed as a ranked order of increasingly higher downgradient concentrations expected from the "best-case" situations (large DAFs) to the "worst-case" situations (small DAFs) for the scenario being investigated.

The Agency's proposed approach was to define DAFs representative of reasonable worst-case conditions as those corresponding to the 85th percentile of the cumulative frequency distribution. The Agency received numerous comments on the selection of the 85th percentile, which are addressed in Section d, following.

b. *Resulting DAFs for Landfills.* The DAF values corresponding to various cumulative frequency levels for landfills are as follows:

Percentile	80	85	90	95
All nondegrading constituents	328	134	47	12
Chloroform[1]	385	152	52	14

[1]The DAFs for chloroform are slightly higher than for the other nondegrading constituents because chloroform is expected to hydrolyze slightly during transport.

The similar DAF values for nondegrading constituents and chloroform arises because all these constituents either do not degrade at all or only degrade slightly.

c. Resulting DAFs for Surface Impoundments. The DAF values corresponding to various cumulative frequency levels for the surface impoundment investigations described in E.2.b of this section are as follows:

Percentile	80	85	90	95
All nondegrading constituents	226	111	51	19
Chloroform	227	111	52	19

As with the landfills, the constant DAF for all constituents reflects the fact that nondegraders and very slow degraders have virtually identical environmental fate for the scenario investigated. As the resulting numbers indicate, within a reasonable degree of accuracy, the DAFs for waste managed in surface impoundments are equivalent to the corresponding landfill DAFs.

d. Final DAF Selection. The Agency's purpose in developing dilution/attenuation factors (DAFs) is to identify wastes whose leaching behavior indicates that they may pose a hazard to human health unless they are controlled under subtitle C management standards. Thus, the Agency developed a subsurface fate and transport model that simulates a subtitle D management unit (i.e., a municipal landfill) and the subsurface environment that would be encountered by toxic constituents as they migrate from the management unit to a drinking-water well. In order to make the model's output (DAFs) as realistic as possible, the Agency implemented the model using real-world distributions for parameter values (e.g., areas of landfills, properties of the subsurface environment, etc.) whenever possible. The monte carlo structure of the simulation allowed the modeling results to be presented as a cumulative frequency distribution or probability. That is, the model expresses the probability that a toxic constituent disposed of in a municipal solid waste landfill will undergo certain dilution/attenuation as it moves through a subsurface environment to an exposure point. Thus, there is a different DAF for each selected probability.

In its June 13, 1986 proposal notice, the Agency proposed the use of the DAF corresponding to the 85th percentile cumulative frequency level and requested comment on the use of other percentile levels. Comments were received urging the use of both higher and lower levels. Recommendations for using the 80th percentile cumulative frequency were justified by assertions that the assumptions used in the model were already unduly conservative. One commenter noted that EPA could still rely on the listing program to regulate wastes whose leachate concentrations would not exceed the regulatory levels derived from the lower percentile DAF but that are still considered hazardous.

Other commenters argued that the 85th percentile was not adequately protective of human health and the environment. One commenter, claiming that assumptions in the model were not conservative enough, recommended that the 95th percentile be used.

In selecting the appropriate level, the Agency recognizes that there is no consensus "correct" level for interpreting modeling results. This has resulted in a particular challenge in developing today's rule, wherein a quantitative approach is being used for guidance in answering what is a partly qualitative question—namely, "what is the human health impact of unregulated management of certain types of wastes in a 'reasonable worst-case' disposal scenario?" While the Agency believes that the 85th percentile is an appropriate choice to represent a reasonable worst-case result, consideration of the relationship of the 85th percentile DAF to other percentile DAFs is also appropriate. That is, the Agency believes that the behavior, or shape, of the upper portion of the cumulative frequency distribution curve should also be evaluated in order to determine how critical the selection of a particular frequency level is to the DAF.

Another consideration in determining the appropriate DAF value, independent of the selected cumulative frequency level, is the accuracy inherent in the data set used. Given that there is some uncertainty associated with any data set used to represent possible values for any parameter, and that the model requires values for many parameters, the Agency believes that the selected DAF value should not imply an undue degree of accuracy.

After considering the above factors, the Agency has concluded that a DAF value of 100 is appropriate for establishing the regulatory levels for the constituents included in today's rule.[1] First, the Agency believes that, considering the number of parameters for which distributions of values were established (in order to represent a "generalized" scenario), a DAF with an order-of-magnitude precision is appropriate.[2] Second, in selecting this DAF value of 100, the Agency noted that the 80th and 90th percentile DAFs, as well as the 85th percentile DAFs, indicate that constituents migrating in the modeled disposal scenario will be diluted by approximately two orders of magnitude. This is also true of the predicted DAFs from the data used for surface impoundments. Thus, EPA believes that a DAF data used for indicating dilution by two orders of magnitude (i.e. 100) is appropriate. Moreover, as the data indicate, on an order-of-magnitude scale, the predicted DAF is not extremely sensitive to the exact cumulative frequency value that was selected.

The Agency points out that the considerations leading to the use of 100 to represent the model-predicted dilution/attenuation factors are unique to today's promulgation. In other cases, different conclusions may be more appropriate. For example, when parameter values can be more narrowly defined (as in site-specific evaluations), the higher degree of precision may be appropriately ascribed to the model-predicted DAFs. Likewise, where the program goals are different (i.e. other than to identify levels that are indicative of wastes that clearly are hazardous), the selection of a value that represents a cumulative frequency value other than the 85th percentile may be warranted.

F. Toxicity Characteristic Leaching Procedure (TCLP) (Method 1311)

1. Introduction

The development of the TCLP and the role of the test in identifying a waste as hazardous were discussed at length in the June 1986 proposal (51 FR 21648). Today, EPA is promulgating the TCLP, with some improvements and modifications, as a replacement to the EP for use in the identification of hazardous waste. (The revised TCLP is promulgated in Appendix II to 40 CFR part 261 and has been designated as EPA Method 1311 and will be incorporated in "Test Methods for Evaluating Solid Waste Physical/Chemical Methods—SW–846".)

The Agency received numerous comments in response to the **Federal Register** notices (51 FR 1602, 51 FR 21648, 51 FR 24856, 51 FR 33297, 51 FR 40593, 51 FR 40643 and 53 FR 18792) related to the TCLP procedure. In particular, EPA received close to 140 comments on the application of the TCLP in response to the June 1986 proposal. The comments covered general issues such as the relationship to the EP, the adequacy of research supporting TCLP development and specifically, the statistical treatment of data. Commenters also addressed technical issues including the suitability of the zero head space extraction (ZHE) vessel; the types of filters, reagents, and leaching media; the quality assurance requirements; and the multiple extraction and oily waste extraction procedures. In addition, comments were received on the use of quantitation limits for establishing regulatory levels. All the comments were categorized and summarized by issue and are presented in the technical background document along with the Agency's response to these comments (Ref. 4).

In this preamble, only certain comments are discussed, which include (a) the applicability of the TCLP to specific types of waste (i.e., solidified wastes); (b) the analytical difficulties encountered during the analysis of the TCLP extract for phenolic compounds and phenoxy acid herbicides; and (c) the use of quantitation limits. The first two comment issues are presented below while the last comment and the Agency's response is given in section IV.C. of this preamble.

2. Adoption in the LDR Rulemaking and Modification from the Proposed Rule

The TCLP was promulgated in Appendix I to 40 CFR part 268 on November 7, 1986 (51 FR 40593), as part of the Land Disposal Restrictions Rule for Solvents and Dioxins. The TCLP is used in the Land Disposal Restrictions (LDR) program to determine whether certain wastes require treatment prior to land disposal and to determine whether certain treated wastes meet the applicable treatment standards. In today's rule, the Agency has incorporated two other clarifications to the TCLP as proposed on May 24, 1988 (53 FR 18792) for use in both the LDR and the TC programs.

The Agency modified the proposed TCLP as a result of the Agency's own research and comments received on the January 14, 1986 (51 FR 1602) proposal for the LDR program and the June 13, 1986 (51 FR 21648) proposal for the TC. These modifications to the TCLP were promulgated on November 7, 1986 for the LDR program. On May 24, 1988, the Agency proposed additional modifications to the TCLP for both the LDR and the TC. In today's rule, the Agency has adopted two of these proposed changes, and is promulgating the revised TCLP for use in both the LDR and TC programs.

[1] As explained previously, the Agency is not, in today's rule, promulgating regulatory levels for several of the constituents for which regulatory levels were proposed. These constituents include those that are expected to hydrolyze appreciably and those for which it has not yet been determined whether the steady-state solution to the subsurface fate and transport model is appropriate. Once the issues associated with these constituents are resolved, the Agency will promulgate or repropose (as warranted) regulatory levels for these constituents. For cases where regulatory levels are reproposed, they may incorporate dilution/attenuation factors other than 100.

[2] The health data is only valid to one order of magnitude precision and thus may control the total number of significant figures.

The first change is the insertion of a more detailed method flow chart to explain how analysts are to perform the test. Comments expressed confusion regarding the original flow chart (e.g., that it was difficult to follow), so the Agency has added this new chart to eliminate confusion. The second change is the addition of new equipment suppliers to provide more information on the availability of suitable testing equipment. The new equipment suppliers include two manufacturers of rotary agitation devices, Environmental Machine and Design, Inc., of Lynchburg, VA, and Millipore Corporation of Bedford, MA; two manufacturers of a zero-headspace extractor (ZHE) vessel, Lars Lande of Whitmore Lake, MI and Environmental Machine and Design, Inc., of Lynchburg, VA; and three manufacturers of filter media, Millipore Corporation of Bedford, MA; Nucleopore Corporation of Pleasanton, CA; and Micro Filtration Systems of Dublin, CA. These manufacturers are listed in Tables 2, 3, and 5, respectively, of the method (i.e., Appendix II of 40 CFR 261), along with company telephone numbers and equipment model numbers.

Another more substantial proposed modification, the addition of a stainless steel cage insert to the bottle extractor, will not be added by the Agency at this time for the reasons discussed below. The Agency had proposed this modification to eliminate the requirement for particle size reduction for certain types of wastes (e.g., solidified materials).

3. Applicability of TCLP to Solidified Wastes

Some commenters expressed reservations regarding the applicability of the TCLP to specific types of wastes. The wastes of concern were solidified wastes. Numerous commenters supported the reinstatement of the structural integrity procedure (SIP) or some other stability criterion for solidified wastes. They argued that particle size reduction (i.e., "grinding") would be inappropriate in those instances where solidification of the waste is needed to meet the best demonstrated available technology (BDAT) provisions of the law and that grinding may not adequately represent the weathering process or the effect of vehicular traffic. Commenters recommended that the Agency retain the SIP. Others agreed that particle size reduction is inappropriate for stabilized monolithic wastes and produces unrepresentative results. Specifically, commenters stated that particle size reduction alters the physical character of many solidified wastes by destroying the cementitious property of these wastes in such a way that the leaching rate increases unrealistically. By increasing the surface area that is available to attack by a leaching medium, the amount and rate at which substances may be leached increases. Inasmuch as waste grinding is not normally employed in municipal landfills, particle size reduction renders the TCLP a less accurate model of leaching in a municipal landfill environment.

Since the June 13, 1986, proposal, the Agency has reviewed the use of the SIP, which uses a drop-hammer to test the integrity of the waste and to reduce its size if it fractures. The Agency found that although the SIP may simulate the potential of a monolithic waste to be degraded by vehicular traffic on a landfill, it cannot address certain other stresses acting on the waste (e.g., wet-dry and freeze-thaw cycles). In addition, the SIP can only be used for wastes that can be prepared in a sample of specified dimensions.

While evaluating the use of the SIP, the Agency found that dense, hard materials would occasionally break the glass extractor bottle. To prevent breakage of the bottles, the Agency developed a cage insert for the extractor bottle. The cage, which is designed to prevent contact between the hard sample and the sides of the bottle, is constructed of 0.25-inch stainless steel woven mesh. Experiments have shown that the use of the cage prevents bottle breakage.

While evaluating the utility of the cage, the Agency noticed that wastes that were believed to be well-solidified retained their monolithic nature in the cage during extraction, whereas wastes that were believed to be less well-stabilized (even though some of them had passed the SIP) were broken into small pieces during the extraction. Thus, these experiments led to the proposed use of the stainless steel wire cage in the extraction apparatus (53 FR 28792, May 24, 1988). The use of this device, the Agency believed, tested the physical integrity of the sample and reduces particle size appropriately.

Commenters expressed support for the cage modification—that it is a step in the appropriate direction toward a more realistic assessment of the environmental leaching potential of a solidified waste. However, commenters also had concerns that the cage was proposed prematurely—that not enough evaluation of waste samples using the cage had been done. Specifically, commenters argued that the cage could possibly leach significant quantities of nickel and chromium to contaminate metals analysis; that it would be difficult to collect representative samples in some cases; that there were problems with the configuration of the cage so that it could not be accommodated to fit a large array of bottles; that the cage's construction provided numerous crevices and a significant amount of surface area for waste residue to collect, making effective cage cleaning difficult; and that solidified samples could be molded into a shape that would cause less material to be sloughed off during extraction, leading to a less aggressive test. The Agency agrees with these commenters and has decided not to go forward with the cage modification at this time. The Agency currently has work underway to evaluate all these concerns, and will continue to evaluate modifications of the TCLP and will propose further improvements as they are developed.

4. Analytical Methods

Several comments addressed the analytical difficulties of analyzing the TCLP extract for phenolic compounds and phenoxy acid herbicides by gas chromatography/mass spectroscopy, SW-846 Method 8250 (GC/MS). These analytical difficulties include the interference of the acetate ion in the TCLP leach fluid with the column packing material of Method 8250. Removal of the acetate ion is often difficult, and equipment damage may result if the acetate is not removed (i.e., the acetate ion can destroy the column packing material).

The Agency agrees that analysis for acidic compounds by GC methods may be difficult, but not impossible. The Agency suggests the use of a bonded-phase capillary column (Method 8270) to reduce the interference from acetate. In addition, the Agency is investigating other methods for removal of the acetate ion from the extract before analysis for the phenolics and herbicide and welcomes alternative suggestions, especially when accompanied by supporting data.

The Agency had suggested the use of HPLC as an alternative to GC/MS analysis of phenolics and phenoxy acid herbicides. However, several commenters believed that an HPLC method is generally regarded as more expensive and not as readily available as GC/MS. In addition, some commenters indicated that GC/MS is a better method analytically than HPLC, and that HPLC would be more difficult to implement. The commenters expressed that, at the very least, a lengthy verification process would be

required to determine an HPLC method's ruggedness and reproducibility and to determine the most effective cleanup steps. The commenters further suggested that even if an effective HPLC cleanup procedure is developed and approved by the Agency, it is bound to increase the analytical costs and slow down the analytical throughput. Even without considering this restriction, the procedure of leaching the organics into an aqueous medium, followed by extraction, recovery, and concentration, is bound to require more manpower and thus more money than a more direct solvent extraction of the solid itself. The commenters indicated that methods for analyzing solid waste for semi-volatile organics and phenoxyacid herbicides are already described in SW–846 and should be the preferred methods, both for practicality and as a way of providing a reliable test.

The Agency agrees that the GC/MS or GC/electron capture (GC/EC) analysis is more advantageous for the analysis of phenolics and phenoxy acid herbicides because the equipment is more readily and widely available than HPLC, despite the associated difficulties. HPLC methods for phenolic compounds are not included in the third edition of SW–846 because of a lack of validation data. The Agency will allow only the use of the GC/MS method until such time that the Agency proposes an HPLC method.

G. Testing and Recordkeeping Requirements

1. Existing Requirements for Generators

Under existing regulations, persons who generate solid waste are not specifically required to test their wastes to determine whether they exhibit the characteristic of EP toxicity or any other characteristic. Instead, solid waste generators are required to make a determination as to whether or not their wastes are hazardous (40 CFR 262.11).

If a waste is found to be excluded from regulation under § 261.4, or if it is found to be a listed hazardous waste under subpart D of 40 CFR part 261, no further determination of hazardousness is necessary. On the other hand, if a waste is neither excluded nor listed, the solid waste generator must determine whether it exhibits any of the hazardous waste characteristics in subpart C of 40 CFR part 261. This determination may be made by either testing the waste or applying knowledge of the waste, the raw materials, and the processes used in its generation.

If a waste is determined to be hazardous, the generator must keep records establishing the basis for that determination (40 CFR 262.40(c)). These records must be maintained for at least 3 years after the generator no longer handles the waste in question. Neither of these recordkeeping requirements, however, applies to solid waste generators who do not generate hazardous wastes.

Other provisions in the hazardous waste regulations make generators responsible for knowing the properties of their wastes and for documenting that knowledge. For example, generators who declare that their wastes are hazardous must nevertheless have sufficient knowledge of their wastes to complete the Uniform Hazardous Waste Manifest, to use proper labels, containers, and placards, and to satisfy all applicable reporting and recordkeeping requirements (see 45 FR 12728, February 26, 1980). In addition, all generators of hazardous waste are required under 40 CFR part 268 to determine whether their wastes are restricted from land disposal.

2. Changes Considered

In the June 13, 1986 proposal, EPA expressed concern that the current system for determining whether a solid waste is hazardous may be inadequate to ensure that wastes are characterized properly as hazardous or nonhazardous. Because of the importance of accurate hazard determinations to the RCRA subtitle C program, the Agency discussed the possibility of requiring solid waste generators to test their wastes periodically.

In the proposed rule, EPA identified three general approaches that might be adopted in the TC final rule. In the first approach, the Agency would retain the current approach, allowing generators to rely on their knowledge of materials and processes used in generating wastes as a basis for their determination. In the second approach, EPA would require the testing of wastes, at a frequency specified by regulation. Finally, in the third approach, the Agency would require testing but without specifying a particular testing frequency. Under this third approach, generators would be required to develop an appropriate testing frequency, based on Agency guidance, and to document the basis for their choice.

Commenters were heavily divided on the issue of testing and recordkeeping requirements. Many commenters, including waste management firms and a few generators, favored mandatory testing of solid wastes. Most of these commenters argued that generators typically lack sufficient information to determine accurately the composition of their wastes without testing. Indeed, one commenter claimed that with 52 constituents regulated at the part-per-million level or lower, a generator could never be sure whether a waste exhibits the TC without performing the TCLP test. The commenters concluded that testing is the only reliable method for ensuring that potentially hazardous wastes are properly identified and managed.

A few commenters offered somewhat different reasons for supporting testing requirements. For example, some commenters pointed out that mandatory testing would facilitate EPA enforcement efforts. Others claimed that mandatory testing would reduce uncertainty by making it clear to generators precisely what EPA expects of them with respect to performing hazardous waste determinations.

Another group of commenters, however, opposed the imposition of a formal testing requirement. These commenters argued that mandatory testing would place an inordinate burden on the regulated community without providing significant benefit for human health and the environment. In particular, the commenters claimed that mandatory testing is unlikely to identify wastes that were improperly characterized as nonhazardous when generators relied exclusively on their knowledge. According to these commenters, generators rely on their knowledge only when the wastes they produce are clearly hazardous or clearly nonhazardous. Whenever uncertainty exists, these commenters stated, generators either declare their wastes hazardous or perform appropriate tests. The commenters emphasized that this cautioned response results from generators' liability for making incorrect determinations, regardless of whether they test their wastes. The commenters concluded that requiring testing of all wastes would deplete resources and place a strain on limited laboratory capacity.

The Agency recognizes that there are many difficult issues related to the imposition of a testing requirement, both for the Toxicity Characteristic and the other hazardous waste characteristics. While the Agency believes that a testing requirement could improve the Agency's enforcement tools, the Agency believes that the current requirements for hazardous waste determinations are not ineffective because many generators do have sufficient knowledge to make a determination without a test. The Agency further believes that liability for incorrect determinations provides a strong incentive for not misclassifying hazardous wastes as non-hazardous. Although EPA thinks that the current

system set forth in 40 CFR 262.11 is effective, the Agency believes that imposing a testing requirement does have some merit, in that it could increase the accuracy of determinations, could clarify the responsibilities of generators, and could facilitate compliance monitoring.

The Agency will continue to evaluate the comments on this issue as well as explore other options for a testing requirement. At present, however, the Agency is not yet ready to go forward with a testing requirement based on any of the options it has evaluated thus far. Should the Agency decide that an appropriate approach is available, it will propose and solicit comment upon the details of that approach in a separate rulemaking. In the meantime, the Agency believes that the existing determination requirement (as specified at 40 CFR 262.11), as well as the liability for incorrect determinations, is effective and practical.

H. Applicability to Wastes Managed in Surface Impoundments

As discussed above, in response to the proposed TC, EPA received many comments questioning the validity of applying the TC to wastes, including wastewaters, likely to be managed in surface impoundments. In response to commenters' concerns, on May 18, 1987, EPA published a Supplemental Notice of Proposed Rulemaking in the Federal Register, which requested comments and data on several issues related to the regulation of wastes managed in surface impoundments under the TC rule. The Agency also requested comment (assuming such an approach) on: (1) The criteria to be used to determine whether the surface impoundment scenario should apply to a particular waste, (2) the point at which concentration measurements should be made (e.g., at the point of generation or within the impoundment), and (3) how multiple surface impoundments should be handled under the TC rule.

Comments received in response to the notice concerning the surface impoundment management scenario are summarized and addressed in section III.A.2.c. Comments received in response to the notice, which addressed sampling point and multiple impoundment issues, are discussed below.

1. Sampling Point

In the May 18, 1987 notice, EPA requested comments on whether evaluations of wastes managed in surface impoundments should be based on measurements of the concentration in the impoundment or at the inlet to the impoundment. In response, some commenters supported sampling at the inlet to the impoundment and stated that sampling the waste within the impoundment is not only contrary to Congressional intent, but conflicts with EPA's own regulations that require the determination of hazard to be made at the point of generation.

Other commenters, however, argued that wastes should be sampled within the impoundment or that the impoundment effluent should be sampled. Many of these commenters argued that measuring the concentrations in the impoundment more accurately represents the concentrations of hazardous constituents that pose a threat to ground water. Some commenters argued that evaluation of hazard should be based on impoundment effluent because concentrations of the wastewaters within the impoundment are approximately the same as the concentrations in the impoundment effluent.

If the Agency were to allow persons to make their determinations on the waste in the impoundment, it would raise questions that the Agency has not yet evaluated completely nor taken comment on. For example, in this situation, should the Agency actually require testing; if so, how often and what should be tested? Would such a result allow persons to land dispose of wastes that (but for the point of hazard determination) would be hazardous, contrary to Congressional intent? Would such a result allow persons to treat wastes without a permit and thus be inconsistent with Congressional intent? EPA concedes that, for some activities (e.g., closure), leachate quality may be more appropriately assessed by measuring concentrations at multiple sites within the impoundment.

The current rules require that the determination of whether a waste is hazardous be made at the point of generation (i.e., when the waste becomes a solid waste). (A waste must be a solid waste before it can be classified as a hazardous waste under RCRA.) EPA believes that determination of the regulatory status of a waste at the point of generation continues to be appropriate, especially since the Agency is not developing a separate mismanagement scenario or set of regulatory levels for wastewaters. To be consistent with other hazardous waste regulations and until the Agency addresses the above questions, EPA is retaining the existing approach of requiring sampling at the point of generation.

2. Multiple Surface Impoundments

In the May 18, 1987 notice, EPA requested comment on how multiple surface impoundments or "treatment trains" should be handled under the TC rule. Some commenters favored regulating all surface impoundments in a treatment train as a single unit—if the first impoundment treats a hazardous waste, all impoundments would be required to comply with the RCRA regulations for hazardous waste treatment facilities. Other commenters, however, suggested that each impoundment should be regulated individually. Still other commenters stated that owners and operators should be required to determine whether the most upstream surface impoundment is treating wastes that exhibit the TC, but they should only be required to evaluate downstream impoundments if an upstream impoundment exhibits the TC.

As discussed above, the Agency has decided not to develop a separate regulatory scheme for surface impoundments. Thus, the Agency will continue to regulate all surface impoundments as individual units and will not pursue any of the other options discussed by commenters. Currently, under 40 CFR part 261, each surface impoundment in a series of multiple surface impoundments is regulated separately. If a surface impoundment receives or generates a hazardous waste, the owner or operator of the impoundment is required to comply with the RCRA regulations governing hazardous waste treatment, storage, and disposal facilities. On the other hand, if a downstream impoundment is not treating or generating a characteristically hazardous waste and upstream units have not managed, listed wastes, then the downstream unit is not subject to RCRA subtitle C requirements.

I. Relationship to Other RCRA Regulations

1. Hazardous Waste Identification Regulations

a. Hazardous Waste Listings. Under the June 13, 1986, proposal, the hazardous waste listings in subpart D of 40 CFR part 261 would not be affected. All the listings would remain in effect, including those listings that were based on the presence of TC constituents. It is EPA's intention that the hazardous waste listings would continue to complement the revised TC as they had the EPTC.

A number of commenters, however, argued that the TC should supersede certain hazardous waste listings. In

particular, they suggested that the TC should be the only basis for regulating wastes that have been identified as hazardous solely because of the presence of a TC constituent. Such an approach, according to the commenters, would establish a more rational basis for identifying hazardous wastes. Wastes failing the TC test would be regulated as hazardous wastes, whether or not they have previously been listed, because they have demonstrated the potential to pose a threat to human health and the environment. Wastes passing the TC test, in contrast, would not be subject to subtitle C regulation. The commenters claimed that, by definition, if the extract from a waste that was listed because of the presence of a TC constituent does not contain the constituent in a concentration greater than or equal to the regulatory level, the waste can safely be managed at a subtitle D facility.

EPA does not agree that the TC revisions justify elimination of any of the hazardous waste listings. The Agency has consistently maintained that individual waste streams may be listed regardless of whether the waste is defined as hazardous by the TC. Exhibiting a characteristic can constitute the basis for listing a waste. In fact, prior to today's action, approximately 25 listings were based on the presence of metals or pesticides covered by the EPTC.

There are a number of reasons for continuing this approach. First, listed wastes frequently contain hazardous constituents other than the ones cited in Appendix VII of 40 CFR part 261 as the basis for the listings. It is for this reason that Congress directed EPA, in evaluating delisting petitions, to consider constituents other than those for which the wastes were listed, assuming that there is a reasonable basis to believe that such constituents might render the wastes hazardous (see RCRA section 3001(f)). In many cases, the additional hazardous constituents that are present in a waste may not be on the list of TC constituents. The listings may therefore serve to identify wastes that pass the TC test but are nevertheless hazardous. Removing wastes from a hazardous waste listing without an evaluation of additional constituents would appear to be inconsistent with the intent of section 3001(f).

Another reason for retaining the hazardous waste listings is that TC constituents may continue to pose a threat to human health and the environment even when they are present in concentrations lower than the regulatory levels. The regulatory levels have not been designed to address the problems of phytotoxicity, aquatic toxicity, or bioaccumulation potential. Moreover, they have not been designed to identify the full range of wastes that may be toxic to human beings. Instead, the characteristic levels have been established at concentrations where there is a high degree of certainty that any wastes with constituents at levels equal to or exceeding the regulatory levels pose a potential threat to human health. Individual wastes may continue to be hazardous, despite the fact that they may contain TC constituents in concentrations below the regulatory levels. This is particularly true for wastes that have the potential to be exposed to more aggressive leaching conditions than those modeled in the TCLP. As a result, EPA believes that wastes previously listed as hazardous should continue to be considered hazardous, whether or not they exhibit the characteristic.

b. "Mixture" and "Derived From" Rules. Because the TC will not supersede the listings for hazardous wastes, it also will not affect the regulatory status of wastes that are hazardous by virtue of the "mixture" rule of 40 CFR 262.3(a)(2)(iv) or the "derived from" rule of 40 CFR 261.3(c). The "mixture" rule provides that any mixture of a listed hazardous waste and a solid waste is itself a RCRA hazardous waste.[3] The "derived from" rule states that any waste derived from the treatment, storage, or disposal of a listed hazardous waste is hazardous.

Several commenters contended that the current regulatory scheme encompasses wastes that contain *de minimis* quantities of leachable organic chemicals. The commenters acknowledged that mixtures and treatment residues posing insignificant threats to human health and the environment may be excluded from regulation through the delisting process. However, they claimed that delisting is unduly expensive, time-consuming, and, in some cases, impractical. The commenters suggested as an alternative that mixtures and treatment residues from listed wastes containing TCLP constituents not be considered hazardous unless they fail the TC test. They contended that this approach would adequately protect human health and the environment. Moreover, it would be "self-implementing," in the sense that it would eliminate the need for the current process of petitions and Agency review for delisting.

EPA recognizes that the "mixture" and "derived from" rules may create some inequities by including wastes that contain very small amounts of hazardous wastes that have been mixed so as to render them nonhazardous. However, the Agency has consistently maintained that the mixture and derived from rules are an appropriate regulatory approach for dealing with waste mixtures and treatment residues.

When the rules were promulgated in 1980, EPA stated that it was essential to regulate waste mixtures to prevent generators from evading subtitle C requirements by simply co-mingling listed wastes with nonhazardous wastes. The Agency also determined that because of the infinite potential combinations of listed wastes and other wastes, it was unable at that time to devise any workable, broadly applicable formula that was capable of distinguishing between hazardous and nonhazardous mixtures. The Agency acknowledged that the "mixture" rule might be overly broad, but noted that generators could avoid any inequities either by segregating their wastes or by obtaining a waste-specific exclusion under the delisting program (see 45 FR 33095, May 19, 1980).

EPA also believed that it was important to regulate wastes from the treatment, storage, or disposal of listed hazardous wastes on the basis that these "derived from" wastes might themselves be hazardous. Once again, however, the Agency found that because of the large number of listed wastes and treatment processes (some of which introduce new hazardous constituents into the treatment residues), it was unable to prescribe standards that could properly distinguish between hazardous and nonhazardous residues. (It should be noted that the definition of treatment is not confined to rendering a waste non-hazardous, but also includes any method designed to change the nature of a waste to render the waste (1) less hazardous; (2) safer to transport, store, or dispose; (3) amenable for recovery; or (4) reduced in volume (see 40 CFR 260.10).) Therefore, the Agency concluded that wastes generated during the treatment of listed wastes should be presumed to be hazardous. Delisting was provided as the mechanism for excluding these wastes from subtitle C regulation (45 FR 33096, May 19, 1980).

EPA is sympathetic to the commenters' concerns regarding use of delisting to exclude wastes that are

[3] The exception to this rule is a mixture of solid waste and a waste that is listed solely because it exhibits a characteristic of hazardous waste. If such a mixture does not exhibit any characteristic of hazardous waste, the mixture is not defined as hazardous [40 CFR 261.3(a)(2)(iii)].

hazardous under the "mixture" and "derived from" rules. The Agency does not believe, however, that the alternative suggested by the commenters (i.e., relying on the TC to regulate mixtures and treatment residues) would adequately protect human health and the environment. As noted above, wastes that pass the characteristic test may nevertheless be hazardous, either because they contain listed constituents at concentrations below the TC regulatory levels but at levels and under circumstances that nevertheless render the waste hazardous or because they contain hazardous constituents that are not covered by the TC rule. As noted above, the TC regulatory levels are not threshold levels defining all hazardous waste, but are levels that are set to clearly define hazardous waste. Wastes containing constituents falling below these levels may still present a hazard in more limited situations.

Nevertheless, the Agency recognizes that some inequities may result by the application of the "mixture" and "derived from" rules to certain dilute listed wastes. The Agency therefore is considering proposing an amendment to the definition of hazardous waste which would establish self-implementing *de minimis* exemption levels for hazardous constituents found in listed wastes. Listed wastes that meet these exemption levels would no longer be listed hazardous wastes and thus would not need to be managed as hazardous wastes unless they exhibit a hazardous waste characteristic.

c. Mixture Rule Exemption. The mixture rule under 40 CFR 261.3(a)(2)(iv) provides an exemption from RCRA subtitle C regulation for mixtures of wastewaters and certain listed spent solvents. The mixture rule exemption is applicable only if the maximum weekly usage of the solvents (other than solvents that can be demonstrated not to be discharged to wastewater) divided by the average weekly flow of wastewater does not exceed specified values. The mixture rule exemption does not apply to wastewaters that exhibit a characteristic of hazardous waste or to wastewaters that contain listed hazardous wastes not specified in the mixture rule exemption.

A number of commenters claimed that the proposed TC conflicts with the mixture rule exemption. The commenters noted that the mixture rule exemption levels are higher than the corresponding TC regulatory levels for solvent constituents. Because of this difference in regulatory levels, the commenters stated that the proposed TC rule will bring large quantities of currently exempted wastewaters into the hazardous waste management system. In effect, the commenters argued that the TC rule will revoke the mixture rule exemption. Commenters disapproved of this result, stating that the mixture rule exemption was promulgated in recognition that small amounts of certain spent solvents are often most efficiently managed by being discharged to a plant's wastewater treatment system and that this method of management does not pose risks to human health and the environment.

EPA acknowledges that the TC rule may bring some currently exempted wastewaters into the subtitle C regulatory system; however, the mixture rule exemption is an exemption from the hazardous waste listings, not the characteristics. Thus, there is no inconsistency between this rule and the mixture rule exemption. In addition, it should be noted that the TC regulatory levels are based on state-of-the-art toxicological data and risk assessment methodologies. Consequently, EPA believes that the TC regulatory levels are the best measures available to identify wastewater mixtures that pose a threat to human health and the environment. In contrast, the mixture rule exemption levels are based upon less current risk information.

Even though some wastewaters presently covered by the mixture rule exemption will become hazardous wastes as a result of the TC rule, EPA believes that the exemption will continue to serve an important purpose by ensuring that mixtures of wastewaters and certain listed spent solvents will not be considered hazardous unless they exhibit a characteristic of hazardous waste. To clarify the mixture rule exemption and make it more consistent with current risk information, EPA is considering proposing in the future that the mixture rule exemption levels be reduced so that they are equivalent to the TC regulatory levels.

d. Delisting. While the June 13, 1986 proposal did not specifically address the effect that the TC might have on the hazardous waste delisting program under 40 CFR 260.22, a number of comments were received claiming that the TC rule would be inconsistent with existing EPA policies regarding case-by-case exclusions. In the August 1, 1988 proposal, however, the Agency solicited comment on the use of the EPACML model in the delisting program.

The commenters noted that each major element of the delisting program is different from the corresponding element in the original TC proposal. For example, the chronic toxicity reference levels that are used to establish "no hazard" levels under the delisting program appear to differ from the levels that were used to establish the proposed TC regulatory standards. In addition, the delisting program uses (as appropriate) a different ground water transport model (i.e., the Vertical and Horizontal Spread (VHS) Model), which generates generic DAFs rather than compound-specific factors. Finally, the delisting program employs (as appropriate) the Organic Leachate Model (OLM) rather than the EP or the TCLP to determine the degree to which various organic constituents are likely to leach from solid wastes. The commenters urged the Agency to use the same reference levels, DAFs, and leaching procedures in both the characteristic and delisting programs. A few commenters expressed a particular preference for adopting the delisting elements as part of the revised TC.

There were a number of differences between the various elements of the proposed TC and the corresponding elements in the delisting program. However, regarding Chronic Toxicity Reference Levels, the only difference between the levels used in the delisting program and those in the TC final rule is the use of different risk levels for the carcinogens (i.e., delisting uses a more conservative risk factor of 10^{-6} for carcinogens, compared to the use of a 10^{-5} risk factor in the TC rule). Many of the differences between the chronic toxicity reference levels used in the TC rule and those in the delisting program have been eliminated as a result of decisions concerning risk levels and apportionment. Furthermore, the health-based levels used in the delisting program and in the TC rule have been updated to incorporate recent Agency evaluations (see 53 FR 18024).

EPA believes that the risk factors being used for each program are appropriate, and does not think that risk levels used to set regulatory levels should necessarily be the same in the two programs because each serves a separate purpose. Delisting evaluates the hazard posed by specific individual wastestreams that have been listed as hazardous. Characteristics identify broad classes of clearly hazardous wastes; specific wastes that may pose a substantial identified hazard in a lower risk range may be listed as hazardous. As discussed below, EPA believes it is appropriate that the delisting program is, in certain cases, more stringent than the characteristic program.

A number of commenters focused on the overall stringency of the characteristic and delisting programs. In particular, the commenters stated that the proposed TC regulatory levels were sometimes greater than and sometimes less than the concentration standards used by the Agency's delisting program in determining when listed wastes may properly be managed in subtitle D facilities. Most of the commenters argued that EPA, in the interest of consistency, should adopt the same concentration standards under the characteristic and delisting programs. Other commenters, however, urged the Agency to establish higher concentration standards under the revised characteristic. The latter group of commenters noted that characteristics are designed to identify broad classes of solid wastes that are "clearly" hazardous, while listings are designed to identify wastes that may not exhibit a characteristic, yet are nevertheless hazardous. The commenters concluded that, in light of the different functions of listings and characteristics, it should be more difficult for a waste to pass the delisting standards (i.e., to be eligible for delisting) than for the same waste to pass the characteristic test.

EPA does not agree with those commenters who argued that the Agency must use the same concentration standards in the characteristic and delisting programs or, that the concentration standards for characteristics must be higher than those for delisting. These programs have very different purposes. While hazardous waste characteristic levels are those equal to or above which a waste is clearly hazardous due to a particular property, delisting levels are those below which a waste is not hazardous. Thus, it is reasonable that these two levels may or may not coincide. Delisting decisions are based on an extensive evaluation of a particular waste which requires specific information on the waste. The characteristics approach to defining a hazardous waste is much more broad. Only one mismanagement scenario is used and it is based on "reasonable worse-case" assumptions resulting in a "generic" regulatory level to be applied to all solid waste. And, of course, section 260.22 of the RCRA regulations specifies that a waste may not be delisted if it exhibits a characteristic of hazardous waste (e.g., the characteristic of EP toxicity). Thus, the delisting program could never be less stringent than the characteristic program.

In regard to the use of different models in the delisting and characteristic programs, in the August 1, 1988 **Federal Register** notice, the Agency specifically solicited comment on the use of the Toxicity Characteristics model (EPACML) in place of the model currently used in the delisting program (the VHS model). All of the commenters supported the use of EPACML instead of the VHS model in the delisting program, although one commenter supported this only if it would not add complexity and thereby increase the time required for delisting petition evaluation. Another commenter stated that the EPACML model should be used in the delisting program but that petition evaluations should not be restricted to the use of any single specific model. Finally, several of the commenters stated that the Agency should present details as to how the EPACML model would be used for delisting in a separate **Federal Register** notice.

In response to these comments, the Agency will use the EPACML model and the TCLP in the delisting program. Also, as suggested, the Agency will explain how the model and the TCLP will be used in a future **Federal Register** notice.

A few commenters expressed concern about the applicability of the TC to wastes that have previously been delisted. The commenters argued that once EPA has ruled (through the waste-specific delisting process) that a particular waste stream poses no threat to human health and the environment, the Agency should be barred from using a generic rule to declare the same waste as being "clearly" hazardous. One commenter claimed that it would be especially unfair to alter the regulatory status of a waste stream after the person managing it has been granted an exclusion and has acted in reliance on that exclusion (e.g., by changing the production process or waste management practices).

EPA has consistently maintained that wastes "excluded" from subtitle C regulation under the delisting program may nevertheless be hazardous if they exhibit a characteristic of hazardous waste (see 40 CFR 260.22). While the TC rule will apply to previously delisted waste, EPA does not, in general, expect that such wastes will become hazardous because of application of the revised TC. The Agency believes that, because delisting levels are more stringent than the final TC levels, the impact of the TC rule on previously delisted wastes will be minimal. Nevertheless, if a previously delisted waste exhibits the TC, it will again be subject to subtitle C requirements (i.e., delisted wastes are treated no differently than any other solid waste).

2. Land Disposal Restrictions

a. Risk Levels and Frequency Interval. The approach used to develop regulatory levels in the proposed TC rule was similar to the original approach suggested for developing treatment standards in the proposed Land Disposal Restrictions (LDR) rule (51 FR 1602, January 14, 1986). Both proposals began with health-based concentration thresholds at the point of exposure and used subsurface fate and transport models to back-calculate allowable constituent concentrations in the leachate. In the June 13, 1986 TC proposal, the Agency requested comments on whether the risk levels and cumulative frequency level used in the TC should be the same as those used to develop the treatment standards in the proposed LDR rule.

Several commenters supported the use of different risk levels and cumulative frequency levels in the two proposals. These commenters stressed that different statutory mandates for the two rules and the entirely different functions of the TC regulatory levels and the LDR treatment standards warranted different approaches. However, other commenters contended that the frequency level and risk levels in the TC rule should be the same as or more stringent than those used in the LDR proposal. Some of these commenters argued that the more stringent risk levels and frequency level in the LDR proposal provided a more appropriate degree of protection for human health and the environment than the corresponding levels and frequency interval in the TC proposal.

The issue of consistency of risk levels and frequency level for the TC and the LDR program is now moot. The LDR final rule (51 FR 40572, November 7, 1986) abandoned the use of screening levels based on risk methodology and subsurface fate and transport modeling, and promulgated an approach to establishing treatment standards based entirely on technology-based standards expressed as Best Demonstrated Available Technology (BDAT). Today's rule continues to be based upon health-based concentration levels and dilution/attenuation factors, the values for which are based upon the predictions of a subsurface fate and transport model.

b. Treatment Standards for TC Wastes. Under RCRA section 3004(g)(4), EPA is required to make an LDR determination for all TC wastes within 6 months of today's action, as discussed in the following section. Several commenters were concerned that the LDR treatment standards that will

eventually be established for the TC wastes may be inconsistent with TC regulatory levels. Some of these commenters noted that the proposed LDR treatment standards for listed spent solvents were in many cases lower than the proposed TC regulatory levels for the identical constituents in unlisted characteristic wastes. The commenters feared that if LDR treatment standards are applied to unlisted TC wastes in the same manner as they are applied to similar listed wastes, the characteristic wastes may require treatment to below the TC level before subtitle C land disposal is permissible. This means that unlisted wastes no longer exhibiting the TC must continue to be managed as hazardous wastes. Some commenters who voiced concerns over potential differences between TC regulatory levels and LDR treatment standards suggested that there should be a clear continuum of regulatory levels, with the higher standards being those that deem a waste hazardous in the first place (i.e., the TC regulatory levels).

Wastes deemed hazardous under the TC will not immediately become subject to the LDR program on the effective date of the TC rule, except perhaps by operation of the California List restrictions (i.e., halogenated organic compounds are subject to the LDR if they exhibit a characteristic, see 52 FR 25770, July 8, 1987). However, the Agency has not yet determined whether the existing LDR California List restrictions should be applicable to newly identified TC wastes. The Agency specifically requested comment on the appropriateness of applying the California List prohibitions to newly identified hazardous wastes in the November 22, 1989 proposed rule for the "Third Third" of scheduled wastes (54 FR 48499). The Agency will fully address this issue as part of the "Third Third" final rule.

Since the Agency is not today proposing LDR treatment standards for the TC wastes, the Agency believes that it is more appropriate to address these comments when the LDR treatment standards are proposed. However, in response to comments that proposed treatment standards for listed solvents were lower than proposed TC levels, the Agency would like to point out that the treatment standards for TC wastes will not necessarily be the same as the corresponding LDR treatment standards for spent solvents. Indeed, if the TC wastes belong to a different treatability group, one can expect that the treatment standards will be different.

c. Schedule for LDR Determinations. For wastes already listed or identified at the time of enactment of HSWA, the Agency must make LDR determinations according to the schedule set forth in RCRA section 3004(g)(4). If EPA fails to make the determinations by the established schedule, the wastes are automatically subject to the land disposal restrictions on the scheduled date. EPA must also make LDR determinations for all wastes that are identified or listed as hazardous after November 1984 (when HSWA was enacted) within six months after the wastes are identified or listed.

On November 22, 1989 (54 FR 48372), EPA proposed treatment standards for those wastes that exhibit the EPTC, as well as any of the other characteristics. Upon the effective date of today's rule, the TC will include the 14 EPTC constituents in addition to the 25 organics, and the TCLP will replace the EP. EPA proposed that the BDAT levels for wastes that exhibit the EPTC for the 14 constituents remain the same when the TC becomes effective. By May 8, 1990 the Agency will establish the final BDAT levels for the 14 constituent currently identified by the EPTC. Newly identified TC wastes are subject to the six-month listing deadline. However, wastes are not automatically prohibited from land disposal if EPA fails to make this required determination within six months.

Some commenters argued that the six-month deadline would accelerate the LDR determinations for listed wastes that contain TC constituents. For example, some commercial chemical products are currently scheduled to be reviewed by May 8, 1990 (51 FR 19300, May 28, 1986). However, these wastes also may exhibit the TC. Commenters were concerned that these wastes may be subject to the six-month deadline and claimed that this would effectively accelerate the determinations in a manner that would be contrary to Congressional intent.

Wastes that are newly identified as hazardous by today's rule will be subject to the six-month deadline for LDR determinations. However, even if EPA were to complete LDR determinations for TC wastes before May, 1990, the Agency disagrees with commenters that this has the potential to accelerate the determinations in a manner that would be contrary to Congressional intent. The dates set forth in RCRA section 3004(g)(4) are deadlines by which EPA must make LDR determinations or the wastes are automatically restricted from land disposal. EPA is in no way prevented or discouraged by the statute from making LDR determinations before any of its deadlines (RCRA section 3004(g)(5), "Not later than * * *"). Indeed, other determinations are being made ahead of schedule; the final rule for restricting "second third" wastes includes treatment standards and prohibitions for some "third third" wastes (54 FR 26594).

3. RCRA Corrective Action and Closure Requirements

Today's rule will have no direct effect on either the action levels of RCRA corrective action or the cleanup standards of RCRA closure requirements. However, to the extent that the TC brings more facilities under the RCRA program as hazardous waste management facilities, additional facilities will be newly subject to the subtitle C corrective action and closure requirements.

Although the corrective action program under subtitle C addresses remediation of releases of hazardous constituents from waste at facilities subject to RCRA permitting, the TC levels will be neither action levels (i.e., concentrations that, if exceeded, signal the need for corrective action) nor cleanup standards. Rather, corrective action, as a process, encompasses trigger levels and cleanup standards that are developed from site-specific information gathered during the investigatory and evaluative phases of the process (i.e., the RCRA Facility Investigation and the Corrective Measures Study).

Thus, the levels or concentrations associated with today's TC rule are largely independent from levels associated with corrective action. Similarly, the closure requirements are unaffected by today's rule. The TC is not used to determine whether a facility has met the requirements for clean closure. However, it must be noted that solid wastes generated as a result of remediation of releases or in pursuance of closure requirements that exhibit the TC must be handled as a hazardous waste.

4. Minimum Technology Requirements

a. Applicability. HSWA added section 3004(o) to RCRA which imposes minimum technology requirements on owners and operators of certain landfills and surface impoundments seeking permits. HSWA also added a new section 3015 imposing similar requirements on certain interim status waste piles, landfills, and surface impoundments. Finally, HSWA section 3005(j) requires surface impoundments to be retrofitted to meet minimum technology requirements. EPA codified the statutory language in the Agency's

Codification Rule promulgated on July 25, 1985 (50 FR 28705). Facilities that will face new RCRA regulation following the promulgation of the TC will need to comply with the minimum technology requirements in order to remain in operation.

b. Scope of Minimum Technology Requirements—1. *Permitted Facilities.* Section 3004(o)(1)(A) requires that after November 8, 1984, certain landfills and surface impoundments must meet minimum technology requirements. The minimum technology requirements for 1andfills and surface impoundments appear in 40 CFR 264.301(c) and 264.221(c), respectively. They require the owner or operator of each new unit and each replacement unit or lateral expansion of an existing unit to install two or more liners and a leachate collection system between and, for landfills, above the liners.

2. *Interim Status Facilities.* Section 3015 of RCRA requires that certain waste piles, landfills, and surface impoundments meet minimum technology requirements. The minimum technology requirements for interim status waste piles, landfills, and surface impoundments appear in 40 CFR 265.254, 265.301, and 265.221, respectively. They require that the owner or operator of each new unit, replacement of an existing unit, or lateral expansion of an existing unit that is within the area identified in the part A permit application install liners and a leachate collection system or equivalent protection. Existing surface impoundments (i.e., surface impoundments regulated under subtitle C prior to November 8, 1984) had to be retrofitted to meet the minimum technology requirements by November 8, 1988.

c. Compliance with Minimum Technology Requirements. Facilities or units newly regulated as a result of the TC will have to meet the minimum technology requirements of sections 3004(o) and 3015 if and when they add a new unit, replace an existing unit, or laterally expand an existing unit. Surface impoundments must comply with the retrofitting requirement in section 3005(j)(6)(A), which requires the owner or operator of a newly-regulated surface impoundment to retrofit that impoundment 4 years from the date of promulgation of the additional listings or characteristics, that made it subject to regulation. Thus, surface impoundments that become regulated under subtitle C because of the TC will need to meet the minimum technology requirements on March 29, 1994. (However, retrofitting may be expedited due to the minimum technology requirements imposed under the capacity variance for land disposal under section 3004.) This extension applies only to those impoundments that contain solely the newly listed/characteristic wastes. Any impoundments that already contained listed/characteristic wastes currently are subject to RCRA regulations, including the minimum technology requirements. Other existing land disposal units (besides surface impoundments) that already contained wastes that exhibit the TC will not require retrofitting unless they are expanded or are replacement units.

5. RCRA Subtitle D (Solid Wastes)

a. Municipal Waste Combustion Ash. Several commenters requested that ash from municipal waste combustion (MWC) units be exempt from regulation under the TC. Many of these commenters argued that the regulation of MWC ash would be in direct conflict with RCRA section 3001(i), which provides that resource recovery facilities engaging in MWC "shall not be deemed to be treating, storing, disposing of, or otherwise managing hazardous wastes." Other commenters indicated that the high costs associated with subtitle C regulation would discourage the recovery of energy values from MSW. They claimed that this result would run counter to the clear Congressional intent to encourage resource recovery as a beneficial alternative to the landfilling of MSW.

EPA articulated its position on the scope of section 3001(i) when the Agency codified the 1984 HSWA (see 50 FR 28725, July 15, 1985). However, two recent Court decisions have rejected EPA's 1985 interpretation. *EDF* v. *City of Chicago,* No. 88C769 (N.D. Ill.) (slip op. Nov. 29, 1989) and *EDF* v. *Wheelabrator Technologies Inc.,* No. 88Civ.0560 (S.D. N.Y.) (slip op. Nov. 21, 1989). The Agency is considering the appropriate response to these two decisions.

b. Impact on Wastes Excluded from Subtitle C Regulation. Another group of commenters asked for assurances that the TC rule would not affect the existing exclusions for specific wastes under 40 CFR 261.4(b). One commenter expressed particular concern about the exclusion for mixtures of household and other nonhazardous solid wastes. Another commenter raised questions about applying the TC to wastes that are usually considered to be non-hazardous solid wastes. Other commenters focused on the exemptions for "special wastes," primarily mining and mineral processing wastes and oil and gas production wastes. A utility company consortium addressed the exemption for wood treated with arsenic, commonly used as a fungicide for utility poles. The commenter noted that cresols and pentachlorophenol, also used as fungicides for wood, are proposed as TC constituents; the commenter asserted that the exemption for arsenic-treated wood should be extended to creosote- and pentachlorophenol-treated wood as well.

The TC rule will not apply to wastes that are already excluded from subtitle C regulation under § 261.4(b). These wastes will continue to be exempt from regulation as hazardous wastes, even if they would exhibit the TC. Likewise, the TC rule does not add any exclusions to the applicability of previously promulgated hazardous waste characteristics. With respect to the issue of creosote- and pentachlorophenol-treated wood, EPA does not at this time intend to expand the list of exemptions under § 261.4(b) to include these wastes. This is discussed further in section III.J.4.b.

It should be noted, however, that the special waste exclusions are currently being reevaluated in accordance with the criteria and procedures mandated by Congress. After completing the studies required by RCRA section 8002, EPA may determine that one or more special wastes should be regulated under RCRA subtitle C (see RCRA section 3001(b)). Such wastes would then be listed or the generators required to determine whether the wastes exhibit a hazardous waste characteristic.

A few commenters argued that even if special wastes are brought into the subtitle C system, they should not be subject to the TC. These commenters claimed that codisposal of special wastes with MSW is implausible because special wastes, by definition, are generated in very large quantities. The commenters recommended that EPA develop a separate mismanagement scenario and leaching procedure for special wastes.

At this time, the Agency cannot agree that the TC should not be applicable to special wastes; rather, the applicability to these wastes will be determined on a case-by-case basis. If EPA makes a determination that any special wastes should be regulated under RCRA subtitle C, the Agency will at that time make a separate determination concerning the applicability of the TC to such wastes.

6. RCRA Subtitle I (Underground Storage Tanks)

a. Scope of the Underground Storage Tank Program. Subtitle I of RCRA provides for the establishment of a

regulatory program for underground storage tanks containing "regulated substances." Regulated substances are defined under RCRA section 9001(2) as (1) petroleum and (2) hazardous substances listed under section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund), excluding hazardous wastes regulated under subtitle C of RCRA.

Except as discussed below, today's action will change the regulatory status of TC wastes that were previously subject to RCRA subtitle I. Because these wastes will be RCRA hazardous wastes, they are excluded from regulation under subtitle I (see 40 CFR part 280.10(b)(1)). For this reason, underground storage tanks that contain TC wastes will be subject to the subtitle C tank requirements rather than those promulgated under subtitle I.

b. Deferral for Petroleum-Contaminated Media and Debris Subject to Part 280 Corrective Action Requirements. As part of its underground storage tank (UST) program, the Agency has recently promulgated regulations which address releases from USTs containing petroleum (see 53 FR 37082, September 23, 1988 and 53 FR 43322, October 26, 1988). Among other requirements, these rules require petroleum UST owners and operators to install leak detection, to report leaks from their tanks and piping, to undertake corrective action to address such releases, and to demonstrate financial assurance for corrective action and third party liability resulting from such releases. These requirements started going into effect in December, 1988, and the Agency estimates that over the next few years more than 300,000 petroleum UST releases will be discovered and be subject to the subtitle I corrective action requirements. In addition, the Agency has, through cooperative agreements, provided funding to states from the Leaking Underground Storage Tank (LUST) Trust Fund under RCRA to undertake the necessary response actions where petroleum UST owners and operators are unable or unwilling to do so. Hundreds of petroleum UST cleanups have been initiated to date under this program.

As noted in the preamble to the final UST rules, due to the large regulated community affected by the UST regulations, the UST program is based on self-implementing requirements and is highly dependent upon voluntary compliance to attain the environmental performance objectives of the program. However, because petroleum contains several of the hazardous constituents for which regulatory levels are being established today (e.g., benzene) some of the petroleum-contaminated media and debris may exhibit the Toxicity Characteristic under today's rule. While the amount and type of media and debris that may exhibit the characteristic at any particular UST site will depend upon the petroleum product, soil type, and the size of the release, it is likely that many sites where petroleum UST releases have occurred will contain some media that exhibits the Toxicity Characteristic. The management of any such media and debris would be subject to subtitle C requirements for hazardous waste management.

The Agency has insufficient information concerning the full impact of this rule on UST cleanups, but the information available to date suggests that the impact may be severe in terms of the administrative feasibility of both the subtitle C and subtitle I programs. Thus, the Agency has decided to defer a final decision on the application of the TC to media and debris contaminated with petroleum from USTs subject to the part 280 requirements. The application of today's rule to these cleanups will be delayed while the Agency evaluates the extent and nature of this impact and alternative administrative mechanisms for implementing the UST cleanups in accordance with subtitle C requirements. The Agency believes that the UST regulations governing cleanups at these sites will be adequate in the interim to protect human health and the environment.

The deferral of a final decision concerning application of this rule to UST cleanups is necessary for several reasons. First, while the actual number of sites and amount of media and debris at each site that would exhibit the toxicity characteristic under today's rule is unclear, based on a preliminary assessment, the number and amount could be extremely high. As noted above, EPA expects hundreds of thousands of UST releases to be uncovered in the next few years. Subjecting each of these sites to subtitle C requirements could overwhelm the hazardous waste permitting program and the capacity of existing hazardous waste treatment, storage, and disposal facilities. Imposition of the subtitle C requirements is also likely to delay cleanups significantly and severely discourage the self-monitoring and voluntary reporting essential to implementation of the UST program. Moreover, the UST cleanup activities involving the most contaminated media and debris are also likely to involve free product recovery. Free product recovery would not be subject to subtitle C requirements because the material being recovered is not a waste.

Because of the uncertainties of the impacts on the UST cleanups as a result of this rule, including the amount of contaminated media that would become hazardous waste and the type of management feasible and appropriate for such waste (i.e., on-site treatment, off-site disposal), EPA cannot determine whether the application of this rule to these cleanups will have the severe consequences on implementation of these RCRA programs that preliminary information suggests. Also, because this issue did not come to the Agency's attention until late in the development of this rulemaking, the Agency has not had an opportunity to obtain public input on this issue, the implications of the subtitle C requirements when applied to UST cleanups, or any alternative regulatory mechanisms to make feasible the implementation of UST cleanups while meeting subtitle C hazardous waste requirements. Thus, the Agency believes that further evaluation of the impacts of applying the TC to soils and ground water contaminated by petroleum from USTs and subject to the subtitle I program is necessary in order to determine whether an exemption for such materials is warranted or whether additional regulatory or administrative changes can or should be made in order to make the application of the TC to UST cleanups feasible.

In order to make a final decision concerning the applicability of this rule to UST sites, the Agency intends to undertake several activities. First, the Agency will attempt to more specifically define the impact of the TC through studies of petroleum UST sites, focusing upon the potential hazard from these sites. More specifically, the Agency will study the characteristics of UST sites (number of UST sites by media type, volumes of media and debris typically removed, fraction of this media and debris that exhibits the TC, if any, etc.), current practices and requirements for management of these media and debris, and how contaminated media and debris from these sites are managed under the new subtitle I state programs. As currently envisioned, these studies will include: (1) A survey of tank vendors, contractors, and others knowledgeable about UST site characteristics and contaminated media and debris management practices; (2) a survey of current state and local programs; and (3) a sampling program conducted in conjunction with one or

more selected states. The Agency also plans to evaluate the impact that subtitle C management of petroleum-contaminated media and debris from USTs would have on the Agency's and states' hazardous waste management programs. In addition, the inclusion of these media and debris in the subtitle C management system will be evaluated in comparison to the available capacity for commercial hazardous waste treatment, storage, and disposal.

Second, the Agency will evaluate whether and how the subtitle C requirements can be feasibly implemented for UST cleanups. This evaluation will include an investigation of regulatory streamlining, phased compliance, or other administrative changes to increase the feasibility of implementing UST cleanups in accordance with subtitle C requirements. As part of this effort and the larger issue of the application of subtitle C requirements to contaminated media, EPA intends to convene a public forum to discuss the relationship between subtitle C and subtitle I requirements, the impacts of the subtitle C program on UST cleanups, and how the subtitle C requirements can feasibly be applied to the UST cleanups.

EPA requests data and comment from the public on these issues. Upon completion of the evaluations described above, EPA will determine whether to retain the temporary exemption for UST cleanups provided in this rule or to remove the exemption and make the TC fully applicable to corrective actions under subtitle I.

7. RCRA Section 3004(n) Air Regulations

In HSWA, Congress directed EPA to "* * * promulgate such regulations for the monitoring and control of air emissions at hazardous waste treatment, storage, and disposal facilities, including but not limited to open tanks, surface impoundments, and landfills, as may be necessary to protect human health and the environment." This provision was added as section 3004(n) of RCRA. In response, the Agency proposed the first of a multi-phased set of air regulations for TSDFs on February 5, 1987 (53 FR 3748). This first phase is intended to apply to equipment that would be used to treat wastes that would first be subject to the Land Disposal Restrictions (LDR) standards to ensure that the LDR treatment did not result in cross-media transfer of hazardous constituents to the air (see III.I.2., above, for a discussion of the LDR program). This first phase is to be followed by proposals for more comprehensive air regulations for TSDFs. Once these air standards are promulgated, they are expected to apply to many of the wastes newly regulated by today's rule.

The February 5, 1987 proposal would limit air emissions of organics as a class from certain treatment units. The proposed rule would apply to specified equipment that contains or is in contact with certain hazardous wastes, which are identified based upon their potential to emit organics. The proposed standards contain two major features. First, a 95% reduction in process emissions from units distilling or stripping (air or steam) organic wastes would be required. Second, leak detection and repair programs would be required for certain valves, pumps, compressors, pressure relief devices, and closed-vent systems. If wastes that exhibit the TC also have concentrations of organic constituents exceeding the regulatory threshold, they will be subject to this first phase of regulation for air emissions.

J. Relationship to Other Regulatory Authorities

1. Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

Although promulgated in fulfillment of a RCRA mandate, today's rule may affect, to varying degrees, remediations performed under CERCLA authority. Such effects or interactions, when they arise, will be associated with section 121(d) of CERCLA, which requires CERCLA remedial actions to comply with all applicable or relevant and appropriate requirements (ARARs) of other federal and state laws, including RCRA.

Several commenters questioned the applicability of the TC to CERCLA sites and argued that the TC would constrain the discretion of Remedial Project Managers and On-Scene Coordinators. However, CERCLA section 121(d) is clear that CERCLA remediations must comply with Federal and State ARARs. Accordingly, RCRA regulations, including today's TC, are incorporated into the CERCLA decision-making and remediation process to augment controls already in place under the CERCLA program.

In addition, a few commenters argued that as a result of today's rule, a greater number of hazardous waste determinations would be made during CERCLA remediations. Consequently, "thousands of additional Superfund sites" would be created, attributable in large part, one commenter notes, to petroleum and petrochemical waste that will exceed TC levels. The Agency disagrees with the commenters. While it is clear that CERCLA remediations must comply with Federal and State ARARs, the TC is not used by CERCLA to determine whether or not to undertake a clean-up action. Rather, the TC will apply to decisions concerning the management of solid wastes (e.g., soil and debris) generated during cleanup activities.

2. Clean Water Act

a. Conflict with NPDES Effluent Guidelines and Pretreatment Standards. Many commenters argued that the regulatory levels in the proposed TC conflict with NPDES effluent guidelines and pretreatment standards under the Clean Water Act (CWA). Several commenters stated that in many cases, the proposed TC regulatory levels are lower than the concentrations allowed in wastewaters directly discharged to surface waters in compliance with NPDES effluent guidelines. Commenters also stated that many wastewaters that are indirectly discharged to publicly owned treatment works in compliance with pretreatment standards will exhibit the TC.

Most of the commenters argued that it would be difficult to justify labeling a wastewater as "hazardous" under RCRA, but "safe" under the CWA. One commenter claimed that differential treatment of identical wastewaters is particularly difficult to justify because leaks from on-site wastewater management operations normally migrate to the same bodies of water that receive NPDES-permitted discharges.

EPA acknowledges the possibility that some wastewaters that meet NPDES effluent guidelines or pretreatment standards may exhibit the TC. However, because the statutory bases for setting regulatory levels are different under the CWA and RCRA, the treatment standards and effluent limitations established under the CWA are not inconsistent with the TC rule. The CWA requires EPA to set effluent limitations to control discharges of toxic pollutants "* * * which shall require application of the best available technology economically achievable * * *" and to set more stringent effluent limitations where necessary to meet applicable water quality standards (see CWA section 301(b)). RCRA, however, mandates that EPA identify wastes which may be a threat to human health or the environment. The criteria for the identification and listing of hazardous waste requires EPA to take into account "* * * toxicity, persistence, and degradability in nature, potential for accumulation in tissue, and other related factors such as flammability, corrosiveness, and other hazardous

characteristics" (see RCRA section 3001(a)). These criteria are different from those used under the CWA.

Accordingly, the two statutory programs have different goals. EPA believes that the TC regulatory levels represent concentrations above which a wastewater poses a potential hazard to human health and the environment, if mismanaged, even if it has been treated to some degree. Therefore, owners and operators of wastewater treatment facilities that treat wastewaters exhibiting the TC will be required to comply with all applicable regulations under RCRA and the CWA.

b. Permit Requirements for Wastewater Treatment Facilities. Many commenters stated that under the proposed TC, many wastewater treatment facilities will become hazardous waste treatment facilities subject to full RCRA permitting requirements. These commenters were concerned that the costs to industry of preparing permit applications and complying with RCRA regulations for hazardous waste treatment facilities will be prohibitive. Some commenters argued that EPA has insufficient resources to process permit applications from all of the wastewater treatment facilities that will require permits.

Although owners and operators of some wastewater treatment facilities that use newly-regulated surface impoundments could be subject to RCRA permitting requirements, EPA believes that the actual number of facilities requiring permits will not be large. The Regulatory Impact Analysis for this rule indicates that other options available to wastewater treatment facilities treating wastewaters exhibiting the TC are likely to be more cost-effective than obtaining an RCRA permit (see section VI. B for a more detailed discussion). In particular, an alternative that the Agency expects may be attractive to many owners and operators is the replacement of surface impoundments with tanks. Retrofitting existing surface impoundments to meet RCRA requirements for hazardous waste management facilities will often be more expensive than building tanks that are subject to CWA requirements in lieu of RCRA permitting requirements. ("Wastewater treatment units" are exempt from the hazardous waste management standards under 40 CFR 264.1(g)(6) and 265.1(c)(10). Similarly, "totally enclosed treatment facilities" are exempt under 40 CFR 264.1(g)(5) and 265.1(c)(9).) Thus, there are options available to owners/operators for whom RCRA standards may be too costly.

There may be some wastewater treatment facilities that opt to continue using surface impoundments to manage wastewaters exhibiting the TC, and these facilities will enter the RCRA permitting system. However, the Agency does not believe that there will be such a large number of facilities that it will overwhelm the Agency's permitting capabilities.

c. Sludges from Publicly Owned Treatment Works (POTW). The preamble to the June 13, 1986 proposed rule requested comments on the regulation of sewage sludge under RCRA and under the CWA. The preamble stated that EPA was considering an exemption from RCRA regulation for sludges from publicly owned treatment works (POTW sludges) upon the promulgation of sewage sludge management standards pursuant to section 405(d) of the CWA.

A number of commenters, including many municipalities, responded to this request for comments. Although a few commenters opposed an exemption from RCRA for POTW sludges, the commenting municipalities supported an exemption from RCRA. These municipalities stated that sewage sludge management regulations, in addition to pretreatment standards, are sufficient to protect human health and the environment without additional regulation under RCRA. Commenters stated that regulating POTW sludge under RCRA will place a significant economic burden on municipalities and will cause municipalities and EPA to face duplicative administrative costs and regulatory confusion.

EPA does not agree with commenters that regulation of POTW sludge under RCRA will place a significant economic burden on municipalities or increase the burden of implementation. EPA's office of Water tested 18 POTW sludge samples using the TCLP; none of the samples tested exhibited the TC at the proposed regulatory levels (Ref. 18). Because the final TC regulatory levels are higher than the proposed regulatory levels, the Agency believes that few, if any, POTW sludges will exhibit the TC. Thus, most POTW sludges will not be classified as hazardous waste under RCRA.

Although EPA does not believe it is necessary to exempt POTW sludges from RCRA at this time, the Agency may reconsider this decision after the sewage sludge management regulations are promulgated. In the unlikely event that a particular POTW sludge does exhibit the TC, the municipality may use the pretreatment program under the CWA to eliminate the indirect discharges of the pollutants that are causing the sludge to exhibit the TC.

3. Safe Drinking Water Act

Several commenters noted that the proposed regulatory level for chloroform is lower than the primary drinking water standard for trihalomethanes (a class of organic chemicals that includes chloroform) established under the Safe Drinking Water Act (SDWA). Most of these commenters consequently declared that the regulatory level had been set too low, and they argued that it would be unreasonable to regulate ordinary drinking water as a hazardous waste. Some commenters asserted that an industrial facility taking water from a public water supplier (a facility supplying drinking water in compliance with the SDWA rules) could find that its noncontact cooling water becomes a hazardous waste after it is passed through the plant and is disposed.

In today's final rule, the regulatory level for chloroform has been raised from that proposed in the June 13, 1986, notice of proposed rulemaking. The change is because of two modifications to the data originally used to set the regulatory level: first, the chronic toxicity reference level for chloroform is roughly 12 times higher than when originally proposed (see 53 FR 18024) and, second, due to the changes in the model, the DAF is about 7 times higher than the one originally proposed. Together, these two changes result in a regulatory level that is higher than both the original regulatory level and the SDWA standard for trihalomethanes. Non-contact cooling water or other wastewaters derived from public water supplies complying with the SDWA thus should not exhibit the TC for chloroform unless these wastewaters are contaminated by other sources.

4. Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)

a. Pesticide Wastes. The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizes EPA regulation of pesticide sale, distribution, use, and disposal. Since RCRA regulations cover solid wastes which include pesticide product wastes, these wastes may be regulated under both FIFRA and RCRA.

Until recently, pesticide disposal under FIFRA was primarily controlled by mandating that product labeling include instructions for the proper disposal of the pesticide and its container. Recent amendments to FIFRA, effective October 25, 1988, authorize the Administrator to impose additional requirements relating to storage, transportation, and disposal of certain pesticides. For example, EPA under FIFRA may issue requirements

and procedures for the storage, transportation, and disposal of suspended or cancelled pesticides and of rinsates or containers associated with the pesticides. Also, EPA may require that applicants for registration of a pesticide submit information regarding methods for safe storage and disposal of the pesticide, and that applicants for registration provide evidence of sufficient financial resources to provide for disposal in the event of suspension or cancellation.

A number of pesticide-related wastes are listed as hazardous under 40 CFR part 261. The listings include four groups: The first, at § 261.31, includes certain discarded unused pesticide formulations containing tri-, tetra-, and pentachlorophenols (F027) or certain compounds derived from the chlorophenols; these are listed as acute hazardous waste. This listing includes approximately 20 phenoxy pesticides and their salts and esters. Today's rule will add the constituent 2,4,6-trichlorophenol, which is used as an active ingredient in pesticide products, to the TC list. Because products containing this constituent are separately listed under F027, the promulgation of specific toxicity limits will not affect their regulation under RCRA (i.e., they will continue to be regulated as acute hazardous wastes at all concentrations, both above and below the TC level).

The second group, at § 262.32, consists of "K" wastes from the production of specific pesticides, such as wastewater treatment sludges from the production of the pesticide chlordane (K032); these are listed as toxic wastes. Again, however, because these wastes are listed, they will not be affected by the regulatory levels of the TC, but will continue to be subject to regulation regardless of concentration levels.

The third grouping, at § 261.33 (e) and (f), consists of "P" and "U" wastes. Section 261.33 lists certain commercial chemical products as hazardous when discarded or intended for discard. Approximately 50 pesticide active ingredients are listed as acute hazardous wastes under § 261.33(e), while 83 pesticide active ingredients are listed under § 261.33(f) as toxic hazardous wastes. Pesticide products containing these chemicals as sole active ingredients or the pure or technical grade of these chemicals are regulated under both RCRA and FIFRA when they become wastes. Generally, products containing these ingredients as one of multiple active ingredients are not regulated (at this time) as hazardous wastes under subtitle C of RCRA unless they meet one of the characteristics; their disposal is still subject to any applicable FIFRA and RCRA subtitle D requirements. For the majority of the 133 listed pesticides, today's rule will not change their status under RCRA; waste pesticides that are either pure, technical grade, or sole active ingredient products will continue to be subject to regulation as hazardous at all concentrations under RCRA subtitle C. Wastes from multiple active ingredient products that do not exhibit a characteristic will still be regulated under any applicable FIFRA and RCRA subtitle D requirements.

Six pesticide wastes that are currently regulated on a concentration basis under the existing EPTC at § 261.24, form the fourth group. These six pesticides (endrin, lindane, methoxychlor, toxaphene, 2,4-D, and silvex) will be retained in the new rule with their current concentration limits, which are based on a DAF of 100. The significant difference between the listings and the TC is that, while multiple active ingredient products are not covered by the listings, they are covered under the characteristic. Thus, increasing the number of pesticidal constituents encompassed by the TC (whether or not they are also listed), brings more multiple active ingredient formulations into the subtitle C system. Consequently, today's rule is expanding regulation of pesticide wastes under RCRA.

Although EPA is adding pesticides to the TC list of constituents, today's rule will not have a significant effect on many pesticide users who generate wastes. RCRA regulations contain special requirements that affect the extent to which pesticide users will become subject to additional RCRA regulation:

- Household pesticide wastes are, like other household wastes, exempt from RCRA.
- Farmers who triple rinse their containers and dispose of the rinsate on their own farm in a manner consistent with 40 CFR 262.51 and label instructions are exempt from RCRA requirements.
- Other small quantity generators under § 261.5 need comply only with reduced requirements. Many pesticide users are small quantity generators.
- Under § 261.7, properly emptied containers may be exempted from further RCRA requirements. Thus, many pesticide containers may not be subject to regulation as hazardous wastes.

As a result, the principal effects of today's final rule will be felt by commercial applicators, such as aerial applicators and pest control operators, who are not eligible for the special requirements applicable to farmers and who may use sufficiently large volumes of pesticides that they exceed the small quantity generator limitations. If they use large quantities of multiple active ingredient pesticide products that have not previously been regulated, such commercial applicators may be newly subject to the RCRA hazardous waste management requirements.

b. Treated Wood Wastes. The Agency is promulgating TC regulatory levels for certain chemicals—for example, cresols and pentachlorophenol—that are commonly used as wood preservatives. In its review of wood preservative chemicals under FIFRA, EPA concluded that these wood preservatives may continue to be used under certain circumstances, and the Agency decided to allow disposal of treated wood by means of ordinary trash collection, burial, or incineration (49 FR 28666, July 13, 1984, and 51 FR 1334, January 10, 1986). However, the mandates of FIFRA and RCRA are different. EPA has previously stated that even if it were determined that certain ground *uses* of treated wood did not pose unreasonable risks, wood *wastes* might still be regulated under RCRA subtitle C (45 FR 78531, November 25, 1980). Under FIFRA, the Agency may determine that the economic benefits of continued use of a pesticide outweigh any potential risks posed by the pesticide. This does not mean, however, that materials treated with pesticides should not be managed in a controlled manner under RCRA at the end of their useful lives, to ensure that long-term risks are minimized.

Some treated wood that is hazardous solely because it fails the EP toxicity test for arsenic which is not a hazardous waste for any other reason or reasons is exempt from regulation as hazardous (40 CFR 261.4(b)(9)). The exemption is limited to wood wastes generated by persons who use wood products for their intended end use. Several commenters claimed that large quantities of treated wood wastes will be newly regulated as hazardous under the TC, and they argued that this result is inconsistent with other EPA policies and regulations. Most of these commenters recommended that EPA expand the existing exemption for arsenic-treated wood waste to encompass all treated wood that exhibits the TC.

EPA has decided not to expand the existing exemption for arsenic-treated wood. If a wood waste does exhibit the TC for a constituent other than arsenic, or if the waste is hazardous waste for any other reasons or reasons, the

Agency believes that the waste should be regulated as hazardous, in order to protect human health and the environment. The arsenic-treated wood exemption is not being revoked at this time, but it may be reevaluated in the future.

5. Food, Drug, and Cosmetic Act (FDCA)

a. Food Wastes. Several commenters noted that allowable levels set by the Food and Drug Administration (FDA) under the Food, Drug, and Cosmetics Act (FDCA) are, in some cases, higher than the proposed TC regulatory levels for the same chemicals. Most of these commenters then asserted that if it is safe to consume substances containing pesticides or additives, it must also be safe to place such substances in municipal landfills. Some commenters expressed concern that food wastes that comply with FDCA pesticide tolerance or action levels may nevertheless have to be handled as hazardous wastes as a result of the TC. One food processing industry trade association requested that the final TC rule state that any waste from food already in compliance with a tolerance or action level set by EPA or FDA is nonhazardous.

The Agency acknowledges that for certain chemicals in waste, it proposed TC regulatory levels lower than FDCA tolerances or action levels in food. However, it is inappropriate to make a direct comparison of these two sets of levels. FDCA levels are set for concentrations in food products, while TC levels apply to concentrations in the *leachate from* waste materials. Because not all toxic constituents leach from the waste, levels in the leachate are lower than in the waste material itself. Accordingly, for a food waste to be hazardous, the waste would have to have constituent concentrations higher than the TC levels. The Agency is unaware of any food-related wastes that will be regulated as hazardous under the TC rule. (In addition, unlike the FDCA, RCRA does not allow consideration of economic factors in establishing regulatory levels of concern.)

If any food waste does exhibit the TC, it may be subject to lesser requirements as household waste (40 CFR 261.4(b)(1)) or under the small quantity generator provisions (40 CFR 261.5). For non-household food wastes that fail the TC (i.e., leachate from the waste contains contaminants in levels equal to or above the regulatory levels promulgated in today's rule) and that are generated in large quantities, it is appropriate that they be managed in a controlled manner to protect human health and the environment. Because EPA sees no conflict between the TC rule and tolerance or action levels under FDCA, this rule contains no exemption for wastes that meet the FDCA standards.

b. Pharmaceutical and Cosmetic Wastes. Several commenters, arguing that the proposed TC levels were too low, pointed out that the proposed regulatory levels are lower than FDCA-allowed levels for the same chemicals in drugs or cosmetics.

Although the proposed TC regulatory levels for certain chemicals were lower than the FDCA levels for the same chemicals in drug and cosmetic products, the levels are higher in the final rule. Moreover, it is clear that different factors must be taken into account when regulating these constituents in drugs and cosmetics rather than in solid wastes, as confirmed by different statutory mandates. The constituents in drugs and cosmetics products, often used in very small quantities, serve a useful function and may be therapeutic in certain quantities and under proper circumstances. However, this does not mean that these same constituents should not be controlled where found at TC levels in waste materials.

Of course, drug and cosmetic wastes generated in households are not subject to subtitle C regulation (40 CFR 261.4(b)(1)) nor are wastes generated by small quantity generators (less than 100 kg/mo of non-acute hazardous waste—see 40 CFR 261.5). However, drug and cosmetic products when discarded may present risks to human health and the environment if disposed in large volumes. Thus, EPA maintains that regulation of large quantities of drug or cosmetic wastes exhibiting the TC is appropriate and not in conflict with the existing FDCA program.

6. Used Oil Recycling Act

The Used Oil Recycling Act of 1980 (UORA), which amended RCRA, was intended to increase safe recycling and reuse of used oil. It established that it is in the national interest to recycle used oil in a manner that both protects public health and the environment and conserves energy and materials. The UORA has been incorporated in section 3014 of RCRA.

Section 3014 of RCRA, as amended by HSWA, requires EPA to make a determination of whether to list or identify used oil as a hazardous waste (see RCRA section 3014(b)). In response to this statutory directive, EPA proposed to list most types of used oil, including recycled used oil, as a hazardous waste on November 29, 1985 (see 50 FR 49258). EPA subsequently decided in November, 1986 not to list used oil because the Agency believed that the listing would discourage recycling of used oil and could result in an increase in the amount of used oil that is disposed of or illegally dumped. The Agency decided to continue to study whether used oil that is disposed should be listed as a hazardous waste under RCRA or regulated under different statutes (see 51 FR 41900 (November 19, 1986)). EPA's decision to withdraw the proposed listing of used oils was invalidated by the D.C. Circuit Court of Appeals in 1988. The Agency was directed by the Court to reconsider the listing of used oil as a hazardous waste based on the technical criteria contained in RCRA section 3001.

Some commenters claimed that used oil would be brought into the subtitle C system under the TC proposal. They stated that used oil is likely to fail the TC test for both aromatic hydrocarbons (e.g., benzene) and chlorinated solvents (e.g., trichloroethylene and tetrachloroethylene). The commenters argued that regulating used oil as a hazardous waste would be inconsistent with the intent of the UORA, as well as with current Agency policies regarding used oil.

Under today's rule, used oil will be regulated as a hazardous waste only: (1) If it exhibits one or more of the hazardous waste characteristics defined in subpart C of 40 CFR part 261 (including the TC as finalized today) and (2) if it is disposed of (rather that recycled). On the other hand, used oil that exhibits one or more of the hazardous waste characteristics and is recycled is exempt from regulation (see 40 CFR 261.6(a)(3)(iii)) except as provided in subpart E of 40 CFR part 266. In addition, RCRA prohibits the use of used oil as a dust suppressant or for road treatment if it is contaminated with dioxin or mixed with a hazardous waste. Thus, used oil that exhibits one or more of the characteristics (except for ignitability) cannot be used as a dust suppressant. In particular, the regulations have the following effect:

- Solid waste that is hazardous waste because it fails a characteristic and that is recycled (except by burning or use as a dust suppressant) is exempt from regulation.
- Characteristically hazardous used oil that is disposed of (or incinerated without recovery of energy value) is subject to full RCRA subtitle C regulation.
- Characteristically hazardous used oil that is being burned for energy recovery is subject to subpart E of part 266—i.e., off-specification used oil is subject to certain administrative requirements, while specification used

oil is subject only to the analysis and recordkeeping requirements of 40 CFR 266.43(b) (1) and (6).

• Characteristically hazardous used oil is prohibited from being used as a dust suppressant, unless it is hazardous solely for exhibiting the ignitability characteristic (see 40 CFR 266.23(b)).

• Characteristically hazardous used oil that is recycled in any manner other than being burned for energy recovery (e.g., by being rerefined) is exempt from subtitle C regulation.

Therefore, today's rule will not affect the regulatory status of most recycled used oil. In fact, today's rule should encourage the recycling of used oil, and not discourage its recycling as suggested by some commenters. It should also be noted that some percentage of used oil already is defined as hazardous (i.e., exhibits one or more of the hazardous waste characteristics and is disposed). Consequently, the amount of used oil that is affected by this rule and is either disposed of or recycled by being burned for energy recovery or used as a dust suppressant will be even less.

The Agency is currently determining how best to deal with used oil listing and management issues. Section 3014 of RCRA also requires EPA to promulgate management standards for used oil that is recycled. Standards for controlling used oil which is recycled were proposed on November 29, 1985 (50 FR 49212), but have not been finalized. The Agency will be addressing these issues as well as addressing the listing determination in the near future.

7. Toxic Substances Control Act (TSCA)

EPA has decided to exempt from the application of this rule certain polychlorinated biphenyl (PCB) wastes that are regulated under the Toxic Substances Control Act (TSCA) and would be identified as hazardous because of today's rule. Specifically, PCB-containing dielectric fluids removed from electrical transformers, capacitors, and associated PCB-contaminated electrical equipment may exhibit the TC, and thus become hazardous wastes when disposed, not because they contain PCBs (which are not among the constituents regulated under the TC) but because they may contain other TC constituents, such as chlorinated benzenes. The Agency has decided to exempt such wastes from the subtitle C management standards because new regulation of these wastes under RCRA may be disruptive to the mandatory phaseout of PCBs in certain electrical transformers and capacitors. In addition, the Agency believes that the regulation of these wastes under TSCA is adequate to protect human health and the environment. However, the exemption applies only to those dielectric fluids (as described above) that are fully regulated under TSCA. Other PCB-containing wastes that are hazardous (i.e., listed or exhibit a hazardous waste characteristic including the existing EPTC wastes—waste codes D004 through D017) are subject to all applicable subtitle C standards. Furthermore, these non-TC hazardous wastes that are (1) liquids containing PCBs at concentration greater than 50 ppm, or (2) solids containing PCBs listed in Appendix III of part 268 at concentrations greater than 1000 mg/Kg, are prohibited from land disposal under 40 CFR part 268.

The disposal and storage of PCB wastes is regulated under TSCA section 6(e)(1) authority rather than under subtitle C of RCRA. Since the enactment of TSCA, the manufacture, processing, and distribution in commerce of PCBs (without an exemption) has been banned and the use of PCB without authorization has been banned. In addition, EPA has developed comprehensive PCB disposal regulations under TSCA. This regulatory framework includes specific disposal requirements for defined classes of PCB wastes, specific marking requirements for PCB items, facility recordkeeping requirements, approval requirements for disposers, and a proposed notification and manifesting system modeled on the subtitle C "cradle to grave" tracking system.

One commenter stated that utility transformer dielectric fluids are likely to exhibit the revised TC and urged the Agency to exempt PCB-containing utility transformer dielectric fluids from the rule. The commenter noted that the regulation of PCBs is unique because the manufacture of PCBs (without an exemption) has been banned. Thus, the critical regulatory concern with respect to these PCB wastes is the need to expedite safe disposal of the chemical. The commenter stressed that if PCB wastes were to be regulated now under RCRA as well as under TSCA, serious legal, practical and administrative complications could result.

The Agency agrees with the commenter. The most significant potential negative impact of dual regulation of these wastes under both RCRA subtitle C and TSCA results from the unique scope and timing of PCB disposal. The Agency estimates that approximately 312 million pounds of PCBs are dispersed among nearly 30 million discrete units of electrical equipment. The TSCA regulations require the phaseout of certain PCB-containing electrical transformers, and EPA expects that the TSCA mandatory phaseout requirements and restrictions will render the next three years a peak period for PCB disposal. Under the authority of the TSCA mandatory phaseout, by October 1, 1990, owners of secondary network higher voltage transformers located in or near commercial buildings are required to either remove or reclassify these transformers. (Reclassification necessitates draining of all PCB fluids from the unit, and replacing them with non-PCB fluids or low concentration PCB fluids, and keeping the transformer in full service, under loaded conditions, for a minimum of three months.) In addition, the phaseout restrictions affect lower secondary voltage network units of PCB-containing electrical transformers located in or near commercial buildings; by October 1, 1993, such transformers must either be removed or be reclassified, or an alternative option for lower voltage units allows for providing enhanced electrical protection on such units by October 1, 1990. Radial PCB-containing electrical transformers must either have enhanced electrical protection or be removed.

The TSCA program, with which the regulated community is familiar, is specifically tailored to deal with the problem of widely dispersed waste generation and the timely disposal of a chemical that is no longer commercially produced. The confusion that could result from the addition of requirements under a separate regulatory disposal system, and the RCRA disincentives to waste production, would cause significant disruption to the expeditious disposal of large quantities of these PCB wastes if these wastes were to become subject to the RCRA hazardous waste regulations.

In addition, the Agency believes that the existing system for PCB disposal, including the existing TSCA disposal regulations and recent additions to the program (e.g., the proposed notification and manifesting rule, published at 53 FR 37436), are adequate to protect human health and the environment with respect to the disposal of these wastes. Thus, further regulation under RCRA for PCB-containing dielectric fluids and associated PCB-contaminated electrical equipment does not appear to be necessary at this time. The Agency will also evaluate the integration of the TSCA PCB regulations with the RCRA hazardous waste regulations for other PCB-containing wastes which are identified or listed as hazardous.

K. Implementation Issues

EPA received many comments concerning implementation of the TC rule. The comments addressed issues including the schedule for companies and municipalities to come into compliance with subtitle C requirements, exemptions and applicability, implications for permit modifications, and administrative requirements. Major comments on implementation are summarized and addressed below. Section V of this preamble further discusses how the Agency will implement today's rule.

1. Notification

In the June 13, 1986 **Federal Register** notice, EPA proposed to waive the RCRA section 3010 notification requirement for persons who manage TC wastes and have already: (1) Notified the Agency that they manage other hazardous wastes and (2) received an EPA identification number. Virtually all commenters who addressed the notification requirement supported EPA's proposal. However, one state agency opposed the proposal, on the grounds that a waiver would hinder efforts to develop a more accurate and complete understanding of hazardous waste management practices within the United States.

EPA has decided, as proposed, to waive the notification requirement for TC waste handlers that have already notified the Agency that they manage hazardous wastes and have received an EPA identification number. The Agency believes that, given the vast scope of the TC rule, a notification requirement for persons already identified within the hazardous waste management universe would present an administrative burden without providing any significant benefits to human health and the environment.

2. Effective Date

Several commenters claimed that the 6-month effective date of the TC rule would not provide them with sufficient time to come into compliance with the full array of hazardous waste regulations. Some commenters argued that it would be impossible for generators of TC wastes to test their wastes, obtain EPA identification numbers, arrange for transport and off-site management of their wastes, modify their short-term storage (i.e., accumulation) practices, and institute the necessary recordkeeping and reporting procedures within a 6-month time frame. The commenters stated that the time constraints are especially unreasonable in light of the shortages of laboratory and TSDF capacity that can be expected to result from the TC revisions. Other commenters claimed that TSDFs will require more than 6 months to come into compliance with the interim status standards of 40 CFR part 265 (e.g., personnel training, contingency planning, and financial responsibility).

EPA appreciates the concerns of the commenters, and the Agency is aware that all of the commenters addressing the effective date for the TC rule encouraged EPA to adopt a delayed effective date for most, if not all, requirements. However, RCRA section 3010(b) requires that hazardous waste regulations become effective 6 months after the date of promulgation unless EPA has good cause to establish an earlier effective date. Thus, the effective date for the final TC rule will be 6 months from the date of promulgation.

However, EPA is promulgating different compliance dates for two different categories of waste generators: (1) All generators of more than 100 and less than 1,000 kg/month of hazardous waste (small-quantity generators) must come into compliance with subtitle C requirements for management of their TC waste within one year of today; and (2) all generators of 1,000 kg/month or more of hazardous waste are required to comply with all subtitle C requirements for TC wastes within six months of today, on the effective date of the rule.

All generators of over 1,000 kg/month of hazardous waste are required to comply with all applicable RCRA regulations for their TC wastes on the effective date of this rule. (The generator quantity refers to all of a generator's hazardous waste, not just newly hazardous TC waste.) The Agency recognizes that this compliance category will include two groups of generators: current hazardous waste generators, including small quantity hazardous waste generators who will be generating additional hazardous wastes and generators of large quantities of solid wastes who will be regulated as hazardous waste generators for the first time. EPA believes that both of these groups of generators should predominantly be large businesses and either be familiar with the waste management regulations or be in a position to come into compliance with the requirements within the six month period. These persons should have been aware of the Agency's statutory commitment and have had ample notice of the impending TC rule through the proposed rule and supplemental notices.

On the other hand, the Agency is allowing an additional six months from the effective date (i.e., one year from today) for generators of greater than 100 but less than 1,000 kg/month of hazardous waste (small quantity generators) to comply with all applicable subtitle C regulations. (As with the over 1,000 kg/month category, this quantity refers to the total quantity of a generator's hazardous waste, not just newly hazardous TC waste.) The TC has the potential to affect an extremely large number of handlers that never before have been subject to the hazardous waste regulations; many of these firms are small businesses. Handlers that will assume small quantity generator status as a result of the TC rule are most likely not regulated under subtitle C at the present time. Thus, these handlers are less likely to be familiar with the waste management regulations, or because of their small business status, will need more than six months to come into compliance with the regulations.

As already indicated, these handlers are likely to be small entities and may be unaware that their practices, which were not regulated in the past, will now be regulated as a result of today's rule. The Agency recognizes that these new handlers of small quantities of TC wastes (over 100 but less than 1,000 kg/month) may have to test their wastes, obtain EPA identification numbers, arrange for transport and off-site management of their wastes, modify their short-term storage (i.e., accumulation) practices, and institute the necessary recordkeeping and reporting procedures. As recognized by the Agency in establishing special requirements for small quantity generators, the burden of initial compliance may fall relatively harder on these generators (see 51 FR 10146, March 24, 1986). Thus, to lessen the burden on the handlers of small quantities of TC wastes, the Agency has developed an outreach program targeted for the small quantity generators which will inform new generators of the required steps necessary to enter the hazardous waste management system. Effective program outreach, however, will take more than 6 months.

In amending RCRA in 1984, Congress, in requiring EPA to promulgate regulations for small quantity generators, indicated that the Agency should consider the impacts on small businesses, while still providing protection to human health and the environment. While this rule is not promulgated pursuant to this provision, we believe the intent of Congress is for the Agency (in promulgating any rule substantially affecting small quantity

generators) to consider such impacts and to provide procedural adjustments where appropriate. EPA believes that extending the compliance date for this group of generators will allow the Agency time to provide necessary assistance and outreach to these generators and will allow sufficient time for small quantity generators to comply with the full range of applicable subtitle C requirements. Finally, by delaying the effective date of the TC for small quantity generators, the Agency will be able to concentrate its initial implementation efforts on large quantity generators, who will generate the vast majority of waste brought into the RCRA subtitle C system under this rule. Thus, because the delayed compliance date for small quantity generators enables the Agency to focus its attention on the waste generators expected to produce the largest volumes of waste, it maximizes protection of human health and the environment.

In summary, the Agency believes that allowing an additional six months for small quantity generators to come into full compliance with the TC will serve two purposes. First, it will allow the Agency time to educate small quantity generators on the RCRA rules, while at the same time, allowing the Agency to focus immediate implementation efforts on large generators of hazardous waste. Second, it will provide the necessary time for small quantity generators to comply with subtitle C requirements as a result of the TC.

3. Permitting

Several commenters expressed concern that they would not be able to submit required permit modifications before the effective date of the rule. Some commenters also expressed concern that the TC revisions could place a significant burden on the system for permitting hazardous waste treatment, storage, and disposal facilities.

The commenters recommended a number of different mechanisms for reducing the prospective burdens on the permitting system, such as (1) Allowing permitted facilities to operate under interim status with respect to newly regulated wastes; (2) handling requests from permitted facilities to manage TC wastes as minor permit modifications, rather than as major permit modifications (especially in the case of facilities that are already permitted to manage listed wastes containing TC constituents); (3) requiring permitted facilities to apply for major permit modifications by the effective date of the TC rule, but not requiring them to actually obtain the modification until a later date; or (4) delaying the effective date of the final rule.

EPA has promulgated amendments to the procedures for permit modifications for treatment, storage, and disposal facilities on September 28, 1988 (53 FR 37934). These changes to the regulations should generally allay the concerns expressed by the commenters. Although the new permit modifications rule will not automatically be effective in authorized states, EPA expects that many authorized states will adopt the provisions and EPA plans to use the new permit modification procedures to implement the TC. The new permit modification procedures are further explained in section V.

IV. Regulatory Levels

The regulatory levels established in today's rule are based on two elements—the toxicity of each constituent and the expected fate of the constituent when released into the environment. The latter element is expressed as a dilution/attenuation factor (DAF), which, when multiplied by the toxicity value, results in the regulatory level. It is this level that, when compared to the results of the TCLP, defines a waste as hazardous. If the waste leachate generated through the TCLP contains constituents equal to or above the regulatory levels in today's rule, the waste is a hazardous waste.

This section summarizes the Agency's basis for selecting the final list of constituents and the regulatory levels that are being promulgated in today's rule.

A. List of Constituents

1. Proposed List

The Agency initially proposed regulatory levels for 38 new organic constituents, proposed to modify the regulatory levels for the six organic constituents that are regulated under the existing EPTC, and proposed to retain the existing levels for the eight inorganic constituents regulated in the existing EPTC (see Table IV–1).

2. Constituents for Which Final Regulatory Levels Are Not Now Being Promulgated

The model used to predict DAFs for today's rule accounts for hydrolysis, which may occur during the transport of a constituent through the environment. If a constituent hydrolyzes during transport, its concentration will decrease more rapidly than it would if it were influenced by dispersion alone. Therefore, the DAF for a constituent that hydrolyzes during transport will be higher than that for a constituent that does not hydrolyze. However, the products that are formed because of hydrolysis of the constituent also may be toxic.

TABLE IV–1.—TC CONSTITUENTS AND REGULATORY LEVELS PROPOSED JUNE 13, 1986

HWNO [1]	Constituents	CASNO [2]	Regulatory level (mg/L)
D016	Acrylonitrile	107–13–1	5.0
D004	Arsenic	7440–38–2	5.0
D005	Barium	7440–39–3	100.0
D019	Benzene	71–43–2	0.07
D020	Bis(2-chloroethyl) ether	111–44–4	0.05
D006	Cadmium	7440–43–9	1.0
D021	Carbon disulfide	75–15–0	14.4
D022	Carbon tetrachloride	58–23–5	0.07
D023	Chlordane	57–74–9	0.03
D024	Chlorobenzene	108–90–7	1.4
D025	Chloroform	67–66–3	0.07
D007	Chromium	1333–82–0	5.0
D026	o-Cresol	95–46–7	10.0
D027	m-Cresol	106–39–4	10.0
D028	p-Cresol	106–44–5	10.0
D016	2,4-D	94–75–7	1.4
D029	1,2-Dichlorobenzene	96–50–1	4.3
D030	1,4-Dichlorobenzene	106–46–7	10.8
D031	1,2-Dichloroethane	107–08–2	0.40

TABLE IV-1.—TC CONSTITUENTS AND REGULATORY LEVELS PROPOSED JUNE 13, 1986—Continued

HWNO [1]	Constituents	CASNO [2]	Regulatory level (mg/L)
D032	1,1-Dichloroethylene	75-35-4	0.1
D033	2,4-Dinitrotoluene	121-14-2	0.13
D012	Endrin	72-20-8	0.003
D034	Heptachlor (and its hydroxide)	76-44-2	0.001
D035	Hexachlorobenzene	118-74-1	0.13
D036	Hexachlorobutadiene	87-68-3	0.72
D037	Hexachloroethane	67-72-1	4.3
D038	Isobutanol	78-83-1	36.0
D008	Lead	7439-92-1	5.0
D013	Lindane	58-89-9	0.06
D009	Mercury	7439-97-6	0.2
D014	Methoxychlor	72-43-5	1.4
D039	Methylene chloride	75-09-2	8.6
D040	Methyl ethyl ketone	78-93-3	7.2
D041	Nitrobenzene	96-95-3	0.13
D042	Pentachlorophenol	87-86-5	3.6
D043	Phenol	106-95-2	14.4
D044	Pyridine	110-86-1	5.0
D010	Selenium	7782-49-2	1.0
D011	Silver	7440-22-4	5.0
D045	1,1,2,2-Tetrachloroethane	630-20-6	10.0
D046	1,1,2,2-Tetrachloroethane	79-34-5	1.3
D047	Tetrachloroethylene	127-18-4	0.1
D048	2,3,4,6-Tetrachlorophenol	58-90-2	1.5
D049	Toluene	106-88-3	14.4
D015	Toxaphene	8001-35-2	0.07
D050	1,1,1-Trichloroethane	71-55-6	30.0
D051	1,1,2-Trichloroethane	79-00-5	1.2
D052	Trichloroethylene	79-01-6	0.07
D053	2,4,5-Trichlorophenol	95-95-4	5.8
D054	2,4,6-Trichlorophenol	88-06-2	0.30
D017	2,4,5-TP (Silvex)	93-76-5	0.14
D066	Vinyl chloride	75-01-4	0.05

[1] EPA Hazardous Waste Code Number.
[2] Chemical Abstracts Service number.

As explained in section III.E.2.a.vii, the Agency does not have sufficient data to address the formation and toxicity of hydrolysis products. Therefore, in today's rule, the Agency is not establishing regulatory levels for those new organic constituents that are expected to appreciably hydrolyze and thereby form potentially toxic by-products. Rather, the Agency expects to address these constituents in a future **Federal Register** notice.

Three of the organic constituents currently regulated by the EPTC may hydrolyze to a significant extent. However, due to uncertainties associated with this mechanism, the Agency believes that it would not be prudent to remove these constituents from regulation on a temporary basis (i.e., until their hydrolysis products can be assessed). Therefore, these constituents (endrin, methoxychlor, and toxaphene) will continue to be regulated at the existing EPTC levels in the interim.

Also, as explained in section III.E.2.a, the Agency has concluded that the steady-state assumption used in the ground water transport model may not be appropriate for all constituents. The constituents for which a steady-state solution may not be appropriate are being deferred from the list of proposed constituents. EPA will promulgate or repropose (as warranted) regulatory levels for these constituents in a future **Federal Register** notice.

3. Final List of Constituents

a. Organic Constituents. The organic constituents for which the Agency is today establishing regulatory levels (i.e., those that are on the current EP list, and those that do not appreciably hydrolyze and for which a steady-state assumption is appropriate) are presented in Table IV-2.

TABLE IV-2.—ORGANIC CONSTITUENTS

EPA HW number [1]	Contaminant	CAS number [2]
D018	Benzene	71-43-2
D019	Carbon tetrachloride	56-23-5
D020	Chlordane	57-74-9
D021	Chlorobenzene	106-90-7
D022	Chloroform	67-66-3
D023	o-Cresol	95-46-7
D024	m-Cresol	106-39-4
D025	p-Cresol	106-44-5
D016	2,4-D	94-75-7
D027	1,4-Dichlorobenzene	106-46-7
D028	1,2-Dichloroethane	107-06-2
D029	1,1-Dichloroethylene	75-35-4
D030	2,4-Dinitrotoluene	121-14-2
D012	Endrin	72-20-8
D031	Heptachlor (and its hydroxide).	76-44-2
D032	Hexachlorobenzene	118-74-1
D033	Hexachloro-1,3-butadiene.	87-68-3
D034	Hexachloroethane	67-72-1
D013	Lindane	58-89-9
D014	Methoxychlor	72-43-5
D035	Methyl ethyl ketone	78-93-3
D036	Nitrobenzene	96-95-3
D037	Pentachlorophenol	87-86-5
D038	Pyridine	110-86-1
D039	Tetrachloroethylene	127-18-4
D015	Toxaphene	8001-35-2
D040	Trichloroethylene	79-01-6
D041	2,4,5-Trichlorophenol	95-95-4
D042	2,4,6-Trichlorophenol	88-06-2
D017	2,4,5-TP (Silvex)	93-76-5
D043	Vinyl chloride	75-01-4

[1] Hazardous waste number.
[2] Chemical abstracts service number.

b. Inorganic Constituents. Among the constituents that were proposed for inclusion in the TC were eight inorganic constituents that are currently regulated in the EPTC. Because EPACML does not currently accommodate metallic species, it cannot be used to predict DAFs for these constituents. Therefore, the Agency is today retaining the regulatory

levels for these constituents at their current levels. When the MINTEQ model (see III.B.5.c) is available to accommodate these constituents, the Agency will reconsider their regulatory levels and propose new ones, if so warranted.

B. Selection of DAFs

The selection of the appropriate DAF for the constituents addressed in today's rule is based on the municipal landfill scenario, as proposed. However, based on comments on fate processes that were not appropriately considered in the model, several constituents have been omitted from the proposed list of constituents—specifically, those that may hydrolyze to more than a negligible extent and those for which the steady-state assumption may not be appropriate.

For the remaining constituents, the Agency believes that a DAF of 100 is appropriate for establishing regulatory levels in today's rule. The basis for this conclusion is explained in Section III.E.4.d.

C. Analytical Constraints

The regulatory levels for the compounds proposed for inclusion in the TC span approximately five orders of magnitude (i.e., from the low parts per billion to 100 parts per million). The calculated regulatory levels for three of these compounds (2,4-dinitrotoluene, hexachlorobenzene, and pyridine) are below the concentrations measurable using currently available methods.

EPA believes that the appropriate way to deal with a calculated regulatory level that is below the analytical detection limit is to use (for the regulatory level) the lowest level of detection that can be attained. The lowest level of a particular chemical that can be reliably measured within acceptable limits of precision and accuracy under routine laboratory operating conditions is that chemical's "quantitation limit." A quantitation limit is determined through such studies as method performance evaluations.

If data from interlaboratory studies are unavailable, quantitation limits are estimated based on the detection limits and an estimated multiplier that represents a practical and routinely achievable level with relatively high certainty that the reported value is reliable. EPA proposed to use a value of five times the analytical detection limit as the quantitation limit and to set the regulatory level at the quantitation limit for those compounds for which the calculated regulatory level is below the quantitation limit, and interlaboratory studies were not available.

Because TCLP extracts are aqueous in nature, the quantitation limits used in this rule are based on the presence of these compounds in a water matrix. The Agency received many comments on the use of the quantitation limit as the regulatory level for the three compounds with health-based thresholds below that level. Most commenters expressed concern that quantitation limits based on analysis of the constituent in a water matrix may not be achievable in more complex samples. The comments discussed potential complications that could hamper analysis of various kinds of wastes and recommended that EPA work toward determining actual quantitation limits on real wastes.

The Agency agrees that the ability to achieve the quantitation levels listed in the proposed rule is strongly influenced by the type of waste that is being analyzed. However, determination of a matrix-dependent quantitation limit would require analysis of a wide variety of wastes. EPA believes that it would be impractical to perform such waste-specific analyses at this time. Therefore, EPA has chosen to use the proposed definition (i.e., five times the method detection limit) for the quantitation limit.

A number of commenters addressed the issue of the generic multiplier used to derive the quantitation limit. Several commenters recommended using 10 to 25 times the detection limit as the regulatory level, while a few commenters supported setting the regulatory level at the detection limit itself, to provide what they believe would be greater environmental protection.

The Agency is working to improve the sensitivity of analytical methods to provide increased protection of human health and the environment. Analytical detection limits are, by definition, not routinely achievable under average laboratory conditions. Thus, a regulatory level set at the detection limit would be difficult for the Agency to enforce and would make it difficult for the regulated community to demonstrate compliance. To provide a consistently enforceable regulatory limit while providing assurance that those wastes that clearly pose hazards are subject to subtitle C requirements, the Agency will set the regulatory level at five times the detection limit. The Agency has a high degree of confidence in setting the regulatory level at the quantitation limit (i.e., five times the detection limit) because other programs within the Agency have successfully used this method in the past to set regulatory levels (e.g., the Contract Laboratory Program under the Superfund Program).

Comments on the use of the quantitation limit are addressed more extensively in the testing methods background document.

D. Final Regulatory Levels

The regulatory levels being promulgated today are equal to the product of each constituent's toxicity threshold and the DAF or the quantitation limit. These regulatory levels are presented in Table IV–3. These levels are designed to identify wastes that clearly pose a hazard and define those wastes as hazardous. However, it should be noted that wastes that do not exhibit this characteristic (e.g., result in TCLP levels that are less than the regulatory levels) are not necessarily nonhazardous and may be listed as a hazardous waste or become hazardous under other hazardous waste characteristics.

TABLE IV–3.—TOXICITY CHARACTERISTIC CONSTITUENTS AND REGULATORY LEVELS

EPA HW number [1]	Constituent	CAS Number [2]	Regulatory level (mg/L)
D004	Arsenic	7440-38-2	5.0
D005	Barium	7440-39-3	100.0
D018	Benzene	71-43-2	0.5
D006	Cadmium	7440-43-9	1.0
D019	Carbon tetrachloride	56-23-5	0.5
D020	Chlordane	57-74-9	0.03
D021	Chlorobenzene	108-90-7	100.0
D022	Chloroform	67-66-3	6.0
D007	Chromium	7440-47-3	5.0
D023	o-Cresol	95-48-7	[4] 200.0

TABLE IV-3.—TOXICITY CHARACTERISTIC CONSTITUENTS AND REGULATORY LEVELS—Continued

EPA HW number [1]	Constituent	CAS Number [2]	Regulatory level (mg/L)
D024	m-Cresol	108-39-4	[4] 200.0
D025	p-Cresol	106-44-5	[4] 200.0
D026	Cresol		[4] 200.0
D016	2,4-D	94-75-7	10.0
D027	1,4-Dichlorobenzene	106-46-7	7.5
D028	1,2-Dichloroethane	107-06-2	0.5
D029	1,1-Dichloroethylene	75-35-4	0.7
D030	2,4-Dinitrotoluene	121-14-2	[3] 0.13
D012	Endrin	72-20-8	0.02
D031	Heptachlor (and its hydroxide)	76-44-8	0.008
D032	Hexachlorobenzene	118-74-1	[3] 0.13
D033	Hexachloro-1,3-butadiene	87-68-3	0.5
D034	Hexachloroethane	67-72-1	3.0
D008	Lead	7439-92-1	5.0
D013	Lindane	58-89-9	0.4
D009	Mercury	7439-97-6	0.2
D014	Methoxychlor	72-43-5	10.0
D035	Methyl ethyl ketone	78-93-3	200.0
D036	Nitrobenzene	98-95-3	2.0
D037	Pentachlorophenol	87-86-5	100.0
D038	Pyridine	110-86-1	[3] 5.0
D010	Selenium	7782-49-2	1.0
D011	Silver	7440-22-4	5.0
D039	Tetrachloroethylene	127-18-4	0.7
D015	Toxaphene	8001-35-2	0.5
D040	Trichloroethylene	79-01-6	0.5
D041	2,4,5-Trichlorophenol	95-95-4	400.0
D042	2,4,6-Trichlorophenol	88-06-2	2.0
D017	2,4,5-TP (Silvex)	93-72-1	1.0
D043	Vinyl chloride	75-01-4	0.2

[1] Hazardous waste number.
[2] Chemical abstracts service number.
[3] Quantitation limit is greater than the calculated regulatory level. The quantitation limit therefore becomes the regulatory level.
[4] If o-m-, and p-cresol concentrations cannot be differentiated, the total cresol (D026) concentration is used. The regulatory level for total cresol is 200 mg/l.

V. Implementation

This section is intended to assist the regulated community in understanding their regulatory obligations for managing TC wastes. Responses to comments and an analysis of issues related to implementation were presented in section III.K.

The first step in a solid waste generator's decision making process must be to determine whether or not particular wastes are hazardous (40 CFR 262.11). If a waste is excluded from regulation under 40 CFR 261.4, or if it is a listed hazardous waste under subpart D of 40 CFR part 261, then no further determination is necessary. If a waste is neither excluded nor listed, a generator must determine whether the waste exhibits any of the characteristics of hazardous waste; the Toxicity Characteristic is one such characteristic of hazardous waste. A generator may determine if a waste exhibits a characteristic either by testing the waste or applying knowledge of the waste, the raw materials, and the processes used in its generation.

When a waste is determined to be hazardous, handlers of that waste must comply with any applicable standards in parts 262, 263, 264, 265, 266, 267, 268 and 270 of chapter 40. Table V-1 presents an implementation timeline for the TC. The remainder of this section illuminates five implementation concerns: state authority, integration of today's TC with the existing EPTC, notification, permitting, and compliance date.

TABLE V-1.—IMPLEMENTATION TIMELINE FOR THE TOXICITY CHARACTERISTIC

0 Months: Publication in the **Federal Register.**

3 Months:
- Generators of 1000 kg/mo or more and TSDFs who have not previously notified submit 3010 Notification to EPA.

6 Months:
- Facilities wishing to avoid entering the RCRA program cease managing newly regulated TC hazardous wastes. Units that were receiving TC hazardous wastes must cease further receipt in order to avoid regulation under Subtitle C.
- Large quantity generators begin to comply with all applicable Subtitle C regulations for newly regulated TC wastes.
- Newly regulated facilities.
  —Submit Part A permit application.
- Already regulated facilities.
  —Interim Status Facilities: submit amended Part A permit application.
  —Permitted TSDFs: submit Class 1 permit modification.

12 Months:
- Small quantity generators begin to comply with all applicable Subtitle C regulations for newly regulated TC wastes.
- Already regulated facilities.
  —Permitted TSDFs: submit Class 2 or Class 3 permit modifications.

18 Months:
- Newly regulated land disposal units: submit Part B permit application and certifications to EPA—Interim Status terminates for those land disposal units that did not submit their Part B permit application and certifications by this date.

A. State Authority

1. Applicability of Final Rule in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified states to

administer and enforce the RCRA program within the state (see 40 CFR part 271 for the standards and requirements for authorization). Following authorization, EPA retains enforcement authority under sections 3008, 7003 and 3013 of RCRA, although authorized states have primary enforcement responsibility. Prior to HSWA, a state with final authorization administered its hazardous waste program entirely in lieu of the federal program. The federal requirements no longer applied in the authorized state, and EPA could not issue permits for any facilities in a state that was authorized to issue permits. When new, more stringent federal requirements were promulgated or enacted, the state was obligated to enact equivalent authority within specified time frames. New federal requirements did not take effect in an authorized state until the state adopted the requirements as state law.

In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by HSWA take effect in authorized states at the same time that they take effect in nonauthorized states. EPA is directed to carry out those requirements and prohibitions in authorized states, including the issuance of permits, until the state is granted authorization to do so. While states must still adopt HSWA-related provisions as state law to retain final authorization, the HSWA requirements are implemented by EPA in authorized states in the interim.

Today's rule is promulgated pursuant to RCRA section 3001(g) and (h). These provisions were added by HSWA. Therefore, the Agency is adding the requirement to Table 1 in § 271.1(j), which identifies the federal program requirements that are promulgated pursuant to HSWA and that take effect in all states, regardless of their authorization status. States may apply for either interim of final authorization for the HSWA provisions identified in Table 1, as discussed in the following section of this preamble.

2. Effect on State Authorization

As noted above, EPA will implement today's rule in authorized states until they modify their programs to adopt these rules and the modifications are approved by EPA. Because the rule is promulgated pursuant to HSWA, a state submitting a program modification may apply to receive either interim or final authorization under section 3006(g)(2) or 3006(b), respectively, on the basis of requirements that are substantially equivalent or equivalent to EPA's. The procedures and schedule for state program modifications for either interim or final authorization are described in 40 CFR 271.21. It should be noted that all HSWA interim authorizations will expire January 1, 1993 (see 40 CFR 271.24(c)).

40 CFR 271.21(e)(2) requires that states with final authorization must modify their programs to reflect federal program changes, and they must subsequently submit the modifications to EPA for approval. The deadline for state program modifications for this rule is July 1, 1991 (or July 1, 1992, if a state statutory change is needed). These deadlines can be extended in certain cases (40 CFR 271.21(e)(3)). Once EPA approves the modification, the state requirements become subtitle C RCRA requirements. States with authorized RCRA programs may already have requirements similar to those in today's rule. These state regulations have not been assessed against the federal regulations being promulgated today to determine whether they meet the tests for authorization. Thus, a state is not authorized to implement these requirements in lieu of EPA until the state program modification is approved. Of course, states with existing standards may continue to administer and enforce their standards as a matter of state law. In implementing the federal program, EPA will work with states under cooperative agreements to minimize duplication of efforts. In many cases, EPA will be able to defer to the states in their program implementation efforts, rather than take separate actions under federal authority.

States that submit their official applications for final authorization less than 12 months after the effective date of these standards are not required to include standards equivalent to these standards in their application. However, the state must modify its program by the deadline set forth in § 271.21(e). States that submit official applications for final authorization 12 months after the effective date of these standards must include standards equivalent to these standards in their application. The process and schedule for final state authorization applications is described in 40 CFR 271.3.

B. Integration of Today's Final Rule with Existing EPTC

As explained above, because this rule is promulgated pursuant to HSWA, it will be effective six months from today in both authorized and unauthorized states and will be implemented by EPA until states receive authorization for this rule. Thus, beginning on the effective date, large quantity generators that generate TC waste in all states are responsible for complying with the appropriate requirements. However, the rule promulgated today also revises an existing RCRA rule defining hazardous wastes that authorized states have been implementing for some time. The two principal changes in the rule are the revision to the leaching procedure, by replacing the EP with the TCLP, and the addition of constituents for which the leachate will be analyzed. The discussion below and Table V–2 describe how state implementation of the existing EPTC will be integrated with EPA implementation of the TC as promulgated today.

1. Facilities Located in Authorized States

There are three types of facilities located in authorized states which are affected by today's rule: facilities which are already operating under a RCRA permit, facilities which are already operating under interim status, and facilities which are subject to RCRA permit requirements for the first time as a result of today's rule. Permitted and interim status facilities can also be affected by today's rule in three distinct ways: (1) The facility may already be managing wastes that are hazardous under the existing EPTC, (2) the facility may already be managing wastes that are hazardous under the existing EPTC but which also exhibit the toxicity characteristic for a new constituent(s) under today's rule (and thus the waste would have a new waste code), or (3) the facility may be managing a solid waste which is newly subject to regulation as a result of today's revision of the TC. Table V–2 summarizes the initial filing requirements and applicable standards for each category of facility.

TABLE V-2.—INTEGRATION OF TC WITH EXISTING EPTC

Status of State authorization	Facility status	Type of waste	What to file	Where to file	Applicable permitting standards
I. Authorized State	A. Permitted	1. Regulated EPA waste w/no new constituents under revised TC.	NA	NA	State permit standards.
		2. Regulated EP waste w/new constituents.	Class 1 permit modification under 40 CFR 270.42.	EPA Regional Office and State.	State permit standards.
		3. Previously unregulated waste in:	Class 1 permit modification under 40 CFR 270.42.[1]	EPA Regional Office and State.	
		-Already regulated unit.			State permit standards.
		-Previously unregulated unit.			40 CFR Part 265.
	B. Interim Status	1. Regulated EP waste w/no new constituents under revised TC.	NA	NA	State interim status standards.
		2. Regulated EP waste w/new constituents under revised TC.	Revised Part A under 40 CFR 270.72.	EPA Regional Office and State.	State interim status standards.
		3. Previously unregulated waste.	Revised Part A under 40 CFR 270.72.[2]	EPA Regional Office and State.	40 CFR Part 265.
	C. Newly-regulated		Part A and 3010 under 40 CFR 270.70.[3]	EPA Regional Office	40 CFR Part 265.
II. Nonauthorized State	A. Permitted	1. Regulated EP waste w/no new constituents under revised TC.	NA	NA	40 CFR Part 264.
		2. Regulate EP waste w/new constituents under revised TC.	Class 1 permit modification under 40 CFR 270.42.	EPA Regional Office	40 CFR Part 265.
		3. Previously unregulated waste in:	Class 1 permit modification under 40 CFR 270.42.[1]	EPA Regional Office	
		-Already regulated unit.			40 CFR Part 264.
		-Previously unregulated unit.			40 CFR Part 265.
	B. Interim Status	1. Regulated EP waste w/no new constituents under revised TC.	NA	NA	40 CFR Part 265.
		2. Regulated EP waste w/new constituents under revised TC.	Revised Part A under 40 CFR 270.72.	EPA Regional Office	40 CFR Part 265.
		3. Previously unregulated waste.	Revised Part A under 40 CFR 270.72.[2]	EPA Regional Office	40 CFR Part 265.
	C. Newly-regulated		Part A and 3010 under 40 CFR 270.70.[3]	EPA Regional Office	40 CFR Part 265.

[1] Facility may also need to receive a Class 2 or Class 3 modification under CFR 270.42.
[2] If newly regulated waste is being managed in a land disposal unit, facility may need to submit certification of compliance within one year under 40 CFR 270.73.
[3] If facility is a land disposal facility, Part B permit application and certfication of compliance must be submitted within one year under RCRA Section 3005(e)(3) and 40 CFR 270.73.

For facilities which have been managing EPTC wastes under an authorized state program and the constituents exhibited by the wastes are unchanged under today's rule, (i.e., no waste code change is necessary), such interim status and permitted facilities have no changes to file with permitting authorities. Similarly, since the regulatory status of the waste is unchanged, management of that waste will continue to be regulated under the authorized state standards. The only effect of today's rule on such facilities is that the facility must use the TCLP when testing for toxic constituents. However, use of the EP in addition to the TCLP may continue to be required as a matter of state law.

For facilities which have been managing EPTC wastes under an authorized state program and the constituents exhibited by the wastes have changed as a result of today's rule, the facility will need to change the waste code assigned to its TC wastes. Permitted facilities must submit permit modifications to EPA reflecting the new wastes codes. Because EPA must implement this rule until the state is authorized to do so, the permittee must comply with federal permit modification procedures under 40 CFR 270.42 rather than state permit modification procedures. However, because the permit undergoing modification is most likely a joint EPA-state RCRA permit, a copy of the modification request should also be submitted to the authorized state. Similarly, interim status facilities must submit a revised part A permit application to EPA pursuant to 40 CFR 270.72, with a copy to state permitting authorities. Although these facilities must make appropriate waste code modifications to reflect the new TC constituents, the wastes are already regulated as EP wastes under the authorized state program. Accordingly, such wastes are not subject to any new management requirements as a result of this rule and must continue to comply with appropriate authorized state

requirements for management of these wastes.

Some permitted and interim status facilities in authorized states will be managing wastes which will become hazardous as a result of today's rule. These facilities must also submit permit modifications or part A permit application revisions to EPA. However, because these wastes were previously unregulated under RCRA, they also were not regulated under the authorized state program. As a result, if these wastes are in a previously unregulated unit, they will be subject to the self-implementing Federal standards for hazardous wastes management at 40 CFR part 265 until permit issuance (for interim status facilities) or modification (for permitted facilities). After permit issuance or modification, the Federal permitting standards at 40 CFR part 264 will apply to these wastes (or the state permitting standards if the permit is ultimately issued or modified by a state authorized for the TC). However, if the wastes are at a permitted facility in a unit that is already regulated, that unit will continue to comply with the applicable 40 CFR part 264 (or state equivalent) standards.

Facilities in authorized states which are newly subject to RCRA permit requirements as a result of today's rule must obtain an EPA identification number and submit their part A permit application and section 3010 notification to EPA in order to obtain interim status (see 40 CFR 270.70). Such facilities are subject to regulation under 40 CFR part 265 until a permit is issued by EPA or a state authorized for the TC.

2. Facilities Located in Unauthorized States

There are also three types of facilities located in unauthorized states which are affected by today's rule: already permitted facilities, facilities operating under interim status, and facilities newly subject to RCRA permit requirements under today's rule. As in authorized states, some of the permitted and interim status facilities have been managing EPTC wastes.

For interim status and permitted facilities which have been managing EPTC wastes that will exhibit no new constituents as a result of the replacement of the EP with the TCLP and the addition of constituents to the TC, there will be no waste code changes. Accordingly, such facilities do not need to submit permit modifications or revised permit applications to EPA and will continue to be subject to the applicable federal standards for hazardous waste management.

Facilities which have been managing EPTC wastes which exhibit the toxicity characteristic for new constituents as a result of today's changes to the TC must notify EPA of the waste code changes for its TC wastes. Permitted facilities must submit permit modifications to EPA as required under 40 CFR 270.42 that reflect the new wastes codes. Interim status facilities must submit revised part A permit applications in accordance with 40 CFR 270.72. These facilities must continue to comply with the applicable federal standards for hazardous waste management.

Permitted and interim status facilities which manage waste that is newly defined as hazardous waste as a result of today's rule must also submit permit modification requests or part A permit application revisions to EPA. Facilities must manage these wastes in accordance with 40 CFR part 265 or 40 CFR part 264 until permit modification or issuance, depending on whether the waste is managed in a newly regulated or previously regulated unit.

Facilities which are newly subject to RCRA permit requirements as a result of today's rule must get an EPA identification number and a part A permit application to EPA in order to obtain interim status. Such facilities are subject to regulation under 40 CFR part 265 until a permit is issued.

C. Notification

Pursuant to RCRA section 3010, the Administrator may require all persons who handle hazardous wastes to notify EPA of their hazardous waste management activities within 90 days after the wastes are identified or listed as hazardous. This requirement may be applied even to those generators, transporters, and TSDFs who have previously notified EPA with respect to the management of other hazardous wastes.

In the June 13, 1986, **Federal Register** notice, EPA proposed to waive the notification requirement for persons who manage TC wastes and have already (1) notified the Agency that they manage other hazardous wastes and (2) received an EPA identification number. EPA has decided to waive the notification requirement as proposed. The Agency believes that, given the vast scope of the TC rule, a notification requirement for persons already identified within the hazardous waste management universe is unnecessary.

EPA is not waiving the notification requirement for TC waste handlers that have neither notified the Agency that they manage hazardous wastes nor received an EPA identification number. Those persons must notify EPA no later than June 27, 1990 of these activities pursuant to section 3010 of RCRA. Notification instructions are set forth in 45 FR 12746, February 26, 1980.

D. Permitting

Currently permitted facilities that manage TC wastes must submit Class 1 permit modifications if they are to continue managing the newly regulated wastes in units that require a permit. The facilities must obtain the necessary modification by the effective date of the rule, or they will be prohibited from accepting additional TC wastes.

Interim status facilities that manage TC wastes in units that require a permit must file an amended part A permit application under 40 CFR 270.10(g) if they are to continue managing newly regulated wastes. The facilities must file the necessary amendments by the effective date of the rule, or they will not receive interim status with respect to the TC wastes (i.e., they will be prohibited from accepting additional TC wastes until permitted).

Newly regulated facilities (i.e., facilities at which the only hazardous wastes that are managed are newly regulated TC wastes) must qualify for interim status by the compliance date of the rule in order to continue managing TC wastes prior to receiving a permit. Under 40 CFR 270.70, an existing facility may obtain interim status by getting an EPA identification number and submitting a part A permit application. To retain interim status, a newly-regulated land disposal facility must submit a part B permit application within one year after the effective date of the rule and certify that the facility is in compliance with all applicable ground water monitoring and financial responsibility requirements (see RCRA section 3005(e)(3)).

EPA recently promulgated amendments to the procedures for permit modifications for treatment, storage, and disposal facilities (see 53 FR 37934, September 28, 1988). The following discussion assumes implementation in accordance with the new rule. EPA will implement the TC by using the new permit modification procedures, consistent with EPA policy (see 53 FR 37933, September 28, 1988).

Under the new regulation in § 270.42, there are now three classes of permit modifications with different submittal and public participation requirements for each class. In § 270.42(g), which concerns newly listed or identified wastes, a permitted facility that is "in existence" as a hazardous waste facility for the newly listed or identified waste on the effective date of the notice must

submit a Class 1 modification by that date. Essentially, this modification is a notification to the Agency that the facility is handling the waste. As part of the procedure, the permittee must also notify the public within 90 days of submittal to the Agency.

Next, within 180 days of the effective date, the permittee must submit a Class 2 or 3 modification to the Agency. A permittee may submit a Class 2 modification if the newly regulated waste will be disposed in existing TSD units and will not require additional or different management practices from those authorized in the permit. A Class 2 modification requires public notice by the facility owner of the modification request, a 60 day public comment period, and an informal meeting between the owner and the public within the 60 day period. The rule includes a "default provision," so that for Class 2 modifications, if the Agency does not make a decision within 120 days, the modification is automatically authorized for 180 days. If the Agency does not reach a decision by the end of that period, the modification is permanently authorized. If the newly regulated waste requires additional or different management practices, a Class 3 modification is required. The initial public notification and public meeting requirements are the same as for Class 2. However, after the end of the public comment period, the Agency will develop a draft permit modification, open a public comment period of 45 days and hold a public hearing.

E. Compliance Date

The Agency is promulgating two different compliance dates for two different categories of TC waste generators: (1) All generators of greater than 100 and less than 1,000 kg/month of hazardous waste (small-quantity generators) must come into compliance with subtitle C requirements for management of their TC waste within one year from today; and (2) all generators of 1,000 kg/month or more of hazardous waste and TSDFs are required to comply with all subtitle C requirements for TC wastes within six months from today, on the effective date of the rule. Thus the EPTC remains in effect until six months after today's date for large quantity generators and TSDFs, and remains in effect for 12 months after today's date for small quantity generators. The generator quantity refers to all of a generator's hazardous waste, not just newly hazardous TC waste.

Further discussion of the Agency's reasons for promulgating an extended compliance date for small-quantity generators is provided in section III.K of this preamble. In summary, the Agency believes that allowing an additional six months for small quantity generators to come into full compliance with the TC will serve two purposes. First, it will allow the Agency time to educate small quantity generators on the RCRA rules while, at the same time, allowing the Agency to focus immediate implementation efforts on large volumes of hazardous waste. Second, it will provide the necessary time for small quantity generators to comply with subtitle C requirements as a result of the TC.

VI. Regulatory Requirements

A. Introduction

This portion of the preamble discusses the analyses required by Executive Order No. 12291 and the Regulatory Flexibility Act. The Agency is required under the Executive Order to estimate the costs, economic impacts, and benefits of "major" rules by conducting a regulatory impact analysis (RIA). Recognizing the potential of the Toxicity Characteristic (TC) rule to affect a broad spectrum of American industry, EPA prepared an RIA comparing several regulatory alternatives. Based on the results of this analysis, the Agency concluded that this final regulation is a major rule. Section VI.B presents the methodology and results of the RIA.

The Regulatory Flexibility Act requires the Agency to assess small business impacts resulting from regulations. The analysis of small business impacts indicated that the TC rule would not have a significant impact on small businesses, and therefore a formal regulatory flexibility analysis was not prepared. Section VI.C addresses potential effects on small businesses.

The Agency received many comments on the RIA for the June 13, 1986 proposal. A summary of comments, along with Agency responses, is included as section VI.D. Section VI.E discusses requirements under the Paperwork Reduction Act.

Details of the regulatory impact analysis and small business analysis are available in the RIA document for the final rule (Ref. 8). This final rule was submitted to the Office of Management and Budget for review as required by E.O. No. 12291.

B. Regulatory Impact Analysis

1. Executive Order No. 12291

Executive Order No. 12291 requires EPA to assess the effect of Agency actions during the development of regulations. Such an assessment consists of a quantification of the potential costs, economic impacts, and benefits of a rule, as well as a description of any beneficial or adverse effects that cannot be quantified in monetary terms. In addition, Executive Order No. 12291 requires that regulatory agencies prepare a regulatory impact analysis (RIA) for major rules. Major rules are defined as those likely to result in (1) an annual cost to the economy of $100 million or more; (2) a major increase in costs or prices for consumers or individual industries; or (3) significant adverse effects on competition, employment, investment, innovation, or international trade.

EPA prepared an RIA comparing the final TC rule with several regulatory alternatives. Based on the RIA, EPA estimates that the final TC rule is a major rule with annual compliance costs of between $130 million and $400 million. The analysis was conducted based on the Office of Management and Budget's "Interim Regulatory Impact Analysis Guidance" and EPA's "Guidelines for Performing Regulatory Impact Analyses."

2. Basic Approach

In the final rule, EPA is amending its hazardous waste identification regulations under Subtitle C of the Resource Conservation and Recovery Act (RCRA) by refining and expanding the existing Extraction Procedure Toxicity Characteristic (EPTC). The resulting TC includes a new extraction procedure (the Toxicity Characteristic Leaching Procedure or TCLP) and 25 new organic constituents in addition to the 14 existing EPTC constituents. Wastes exhibiting the TC, based on concentrations of constituents in the TCLP extract, are designated as hazardous wastes and are brought under subtitle C regulation.

EPA estimated the costs, economic impacts, and benefits of the final rule and of a number of major regulatory alternatives to the rule. Only the anticipated effects of the final rule are presented in this preamble; results for the regulatory alternatives are discussed in the RIA. In presenting the results of the analysis, the Agency has presented range estimates for costs, economic impacts, and benefits to express the uncertainty associated with certain analytical assumptions.

In order to gauge the effects of the final rule, EPA first identified wastes and industries which would be affected by the rule. Incremental costs for affected facilities were estimated based on the change in waste management practices which would be required once

the wastes became hazardous. These incremental costs were aggregated to estimate national costs of the rule.

Economic impacts on facilities were based on a comparison of facility compliance costs with costs of production and cash from operations. The potential for facility closures was also examined.

Benefits, like costs, were based on required changes in waste management practices. Benefit measures included human health risk reduction, resource damage reduction, and cleanup costs avoided. Facility-level benefit estimates were aggregated to obtain national benefits.

Section VI.B.3, below, presents the methodology used to estimate costs, economic impacts, and benefits. It also briefly describes the sensitivity analyses that were conducted to determine the significance of key analytical assumptions; these sensitivity analyses are discussed in more detail in the RIA. Limitations of the analytical approach (e.g., assumptions which are likely to overstate, understate, or create uncertainty in results) are discussed in the RIA. Results of the analysis of costs, economic impacts, and benefits are provided in section VI.B.4.

3. Methodology

The methodology for the RIA is presented in several parts. First, the procedure for identifying wastes and facilities affected by the TC is discussed. Next, the development of national cost estimates is presented. The section on economic impact methodology describes the criteria used in gauging impacts on the regulated community. Following that is a section that presents several alternative measures of benefits of the rule. The last section describes the methodology for analysis of used oil.

a. *Determination of Affected Wastes and Facilities.* The first step in estimating the impacts of the rule was to determine which wastes and facilities would be affected by the rule, based on waste characteristics, quantities, and management practices. No single data source contained all of this information, and none of the data were facility-specific. Therefore, the Agency assembled aggregated data (e.g., by industrial sector) from separate sources and used it to draw inferences on facility-level impacts.

Data on waste characterization and volume came primarily from a series of TC industry studies. (Ref. 19 through 29) These studies were conducted for major industrial categories identified as likely to generate significant quantities of TC wastes; other sectors, generating smaller quantities of potentially affected waste, were not addressed. Standard Industrial Classifications (SICs) for the industrial sectors studied range between the two-digit and four-digit levels. The industries profiled are shown in Table VI–1.

TABLE VI–1.—POTENTIALLY AFFECTED INDUSTRIES CONSIDERED IN RIAS FOR THE PROPOSED AND FINAL TC RULES

Industry	SIC [1]	Proposed	Final
Textile Mills [2]	22		X
Lumber and Wood Products.[2]	2421, 2499		X
Pulp and Paper [2]	261, 262, 263, 266.		X
Printing and Publishing.	27		X
Plastics Materials and Resins.[2]	2821	X	X
Synthetic Rubber.[2]	2822	X	X
Synthetic Fibers.[2]	2823, 2824		X
Pharmaceuticals.[2]	283	X	X
Soaps and Other Detergents.	2841	X	
Surface Active Agents.	2843	X	
Paints and Allied Products.	2851	X	
Organic Chemicals.[2]	2865, 2869	X	X
Agricultural Chemicals.	2879	X	
Petroleum Refining.[2]	2911	X	X
Miscellaneous Petroleum and Coal Products.[2]	2992		X
Rubber and Miscellaneous Plastics Products.[2]	30		X
Non-Ferrous Wire Drawing and Insulation.	3357	X	
Machinery and Mechanical Products.	34 through 39		X
Pipelines, except Natural Gas.[2]	461		X
Electrical Services	4911		X
Wholesale Petroleum Marketing.[2]	517		X

[1] SICs listed are those defining the group considered in this analysis. SICs given at the two-digit or three-digit SIC level indicate that the analysis applies to all four-digit SICs contained within the broader category

[2] Included in detailed quantitative analysis for the final RIA.

The industry studies provided data including waste type (wastewater, sludge, solid process residual, or organic liquid), waste quantity, constituent concentration ranges and distributions, and number of generating facilities. The data in the studies were based primarily on EPA's effluent guidelines reports, supplemented by best engineering judgement and data received in comments on the proposed rule or in follow-up correspondence (Refs. 30 and 31). Most of the wastes which were included were related to wastewater treatment; there was relatively little data on process residuals. Wastes which were already hazardous by virtue of a listing or characteristic (e.g., the EPTC) were not included. Due to lack of data, certain types of wastes were not included in the analysis (e.g., contaminated soil, off-spec products, contaminated debris).

It is particularly difficult to predict the behavior of oily wastes in the TCLP test. For the purpose of deriving upper bound estimates of costs, economic impacts, and benefits, one assumption that EPA adopted was that oily non-liquid wastes would not present filtration problems in the TCLP (i.e., that the oily phase passes through the filter and hazardous constituents in the oil phase leach to the test extract) and that if extract concentrations exceeded regulatory levels, these wastes would fail the TC. As a basis for lower bound estimates for costs, economic impacts and benefits, the Agency assumed that no oily wastes will be caught by TC regulation because the oily phase (and corresponding high levels of toxic constituents) would not filter through to the extract in the TCLP.

Due to the lack of facility-specific waste generation data, certain assumptions had to be made to derive the quantity of each wastestream per facility. First, potentially affected facilities within each industrial sector were split between small (with less than 50 employees) and large (with 50 employees or more) facility size categories based on 1982 Census of Manufacturers data on the number of facilities by size category. (The 1982 Census data were the most recent available.) Second, the total quantity of potentially affected waste was distributed between small and large facilities based on Census of Manufacturers data on the value of shipments for the small and large size categories. Using the distribution of facilities and of total waste quantity between small and large size categories, EPA estimated wastestream quantity per facility for small and large facilities.

EPA conducted a sensitivity analysis in order to test the sensitivity of results to the assumed distribution of wastes based on value of shipments. Since the division of waste quantities based on value of shipments resulted in most waste being generated by large facilities, EPA tested the alternative assumption that waste quantities were split evenly between the large and small facility size categories in each industry. (Results of sensitivity analyses are presented in section VI.B.4.)

Baseline management practices (i.e., management practices in the absence of the regulation) were derived primarily from the Screening Survey of Industrial subtitle D Establishments. (Ref. 16.) This survey provided information on the percent of facilities, by industrial sector, which manage non-hazardous wastes on-site in landfills, surface impoundments, waste piles, and land application units. Other baseline management practices were not specifically identified in the survey; therefore, EPA had to use knowledge of potentially affected TC wastes to identify these other practices and estimate the percentage of facilities using them.

In the case of non-wastewaters, the other practices considered included management in off-site landfills and land application units. For wastewaters, the other baseline practices included management in tanks as part of a wastewater treatment system, direct discharge under a NPDES permit, or indirect discharge to a Publicly Owned Treatment Works. These other wastewater management practices were assumed to be permissible under subtitle C; therefore it was assumed that facilities using these practices for wastes which were identified as hazardous by the TC would not be affected by the TC rule. EPA examined the sensitivity of results to this assumption by assuming, alternatively, that all wastewaters were managed on site in subtitle D surface impoundments.

For organic liquids, EPA determined, based on the Office of Solid Waste's Industry Studies Database, that the most likely baseline management practices were recycling and burning. EPA assumed that incremental management costs for these wastes would not be significant and therefore did not include the wastes in the analysis.

By combining the waste characterization and volume data with the management practice data, it was possible to estimate, by industrial sector, the amount of waste and the number of facilities potentially affected by the TC.

In order to determine the quantity of each wastestream which would be affected by the TC, the regulatory levels for constituents in the waste were compared with the estimated concentration distributions, derived from the TC industry studies, for constituents in the waste leachate. The constituent which caused the largest percentage of the wastestream to fail the TC was designated as the "cost-driving" constituent, and the quantity exhibiting the TC due to the presence of that constituent was used as the affected quantity. EPA tested the sensitivity of results to the assumption that waste would fail for a single driving constituent by adding the percentages failing for all constituents (up to 100 percent).

Due to the lack of facility-specific data, it was assumed that the percentage of facilities affected by the TC for a particular wastestream would equal the percentage of the total waste failing the TC. (For example, if 25 percent of a wastestream failed, it was assumed that 25 percent of the facilities generating the waste would be affected and that all of the wastestream at each affected facility would fail.) In order to test the importance of this assumption, EPA adopted two alternative assumptions as sensitivity analyses: for any percentage of waste failing (except for 0 and 100 percent, where clearly no facilities or all facilities would be affected), the percentage of facilities affected would be 10 percent or, alternatively, 90 percent.

The effects of potential production process changes in response to the rule were not addressed.

b. Cost Methodology. EPA estimated both the social costs and the compliance costs of the final rule. Social costs do not include transfer payments between different parties within society (i.e., they do not include tax payments or above-average profits); the social costs therefore represent the real resource costs imposed by the rule on society as a whole. Compliance costs, which include the effects of taxes and above-average profits, more accurately reflect the effect of the rule on particular entities within society.

1. Social Costs

EPA estimated the national social costs of the final rule by calculating before-tax incremental management costs for affected wastes at model facilities and then summing the facility costs across industrial sectors.

Before-tax incremental costs were calculated by subtracting baseline management costs from post-regulatory costs. Baseline management practices were determined as discussed previously. Post-regulatory management practices were developed based on waste types and quantities; the least-cost practice among those feasible for a waste was chosen as discussed below. The post-regulatory practices did not include potential waste treatment practices under the land disposal restrictions program since land disposal restrictions requirements for TC wastes will not come into effect until after the TC rule is promulgated. Possible post-regulatory management practices, as well as baseline practices, for TC wastes are shown in Table VI-2.

TABLE VI-2.—BASELINE AND POST-REGULATORY MANAGEMENT PRACTICES

Waste type	Baseline practice	Post-regulatory practice
Wastewater	On-site Subtitle D surface impoundment.	On-site tank exempt from Subtitle C, Subtitle C surface impoundment.[1]
	or	
	Practice permissible under Subtitle.[2]	Same as baseline.[3]
Non-wastewater.	On-site Subtitle D landfill or land application unit or off-site Subtitle D landfill.	On-site or off-site Subtitle C landfill or land application unit.
Organic liquid	Burning, recycling.	Same as baseline.[3]

[1] Dilution and deep-well injection were also considered as post-regulatory practices but were found to be more expensive than tank management.

[2] Includes management in Subtitle C-exempt tanks, direct discharge under a NPDES permit, or indirect discharge to a Publicly Owned Treatment Works.

[3] Since the post-regulatory practice was the same as the baseline practice, the rule would not affect management of these wastes.

To estimate before-tax baseline and post-regulatory costs for wastes, EPA first estimated the cost per metric ton for the different on-site and off-site waste management practices. Before-tax costs for on-site management units include operation and maintenance (O&M) and capital costs. O&M costs are incurred annually for operation and maintenance of waste treatment or disposal units. Capital costs include costs for construction of the unit and for depreciable assets; these costs, which assumed an average operating life of 20 years, were restated as annual values by using a capital recovery factor based on a discount rate of three percent. RCRA-related costs such as personnel training, financial assurance, and liability insurance were included as indirect capital costs.

For the subset of subtitle D facilities which could potentially become subtitle C TSDFs in order to manage TC wastes on-site, post-regulatory costs for on-site management also included corrective action costs. Corrective action costs for units were based on data from the to-be-proposed corrective action subpart S rule RIA, which indicated the probability of a unit requiring a RCRA facility assessment, RCRA facility investigation, and corrective action cleanup. Corrective action costs were

not assigned to facilities which were determined to already be subtitle C treatment, storage, and disposal facilities, since units at these facilities would already be subject to corrective action requirements under subparts S and F. Like capital costs, corrective action costs were converted to annual values.

The annualized capital and (as appropriate) corrective action costs were added to yearly O&M costs to derive overall annualized costs for on-site units of various sizes. These annualized costs were then divided by the waste management capacities of the units to obtain the costs per metric ton for on-site management in different units.

Off-site management costs were based on commercial hazardous waste management prices, adjusted for the effects of above-average profits. Shipping costs were included for wastes sent off-site. Neither the on-site nor off-site costs included the cost of waste testing.

Since no data were available on the combinations of wastestreams generated at particular facilities, EPA used an algorithm to create model facilities. In estimating costs for the model facilities, wastes that were amenable to co-management were grouped to identify economies of scale.

Once the costs per metric ton for different types of on-site and off-site management had been developed and waste quantities for the model facilities had been determined, EPA estimated each facility's baseline cost based on the quantities of waste and the cost per metric ton for the baseline management practices identified for the wastes. The post-regulatory cost for each facility was estimated in a similar way. The post-regulatory management practices for facilities were selected by comparing the cost per metric ton for different feasible post-regulatory practices for wastes and selecting the least expensive alternative. (This comparison was made based on compliance costs, rather than social costs, as discussed below). EPA then subtracted baseline costs from post-regulatory costs to obtain the before-tax incremental cost for each facility. These before-tax incremental costs were then added across industrial sectors to obtain the total (national) social costs of the rule.

EPA examined the possibility that some facilities managing wastewaters would incur costs over and above the cost of switching from management in unlined surface impoundments to management in wastewater treatment tanks that are exempt from subtitle C. To calculate upper bound costs, the Agency assumed that facilities generating large quantities of TC wastewater (over 400,000 metric tons per year) would not be able to convert existing non-hazardous surface impoundments to tanks by the effective date of the rule (i.e., October 1, 1990) and therefore would become interim status facilities under RCRA and subject to subtitle C closure of any impoundments. The upper bound cost estimates included costs for subtitle C "landfill closure" of the surface impoundments currently used to manage TC waste. Costs for surface impoundment subtitle C closure included pumping of free liquid, solidification of sludges, construction of a cover system, installation of upgradient and downgradient ground water monitoring wells, closure certification, and potential corrective action costs triggered by bringing facilities with TC surface impoundments into the subtitle C system.

2. Compliance Costs

EPA used the same basic approach to estimate compliance costs that was used to estimate social costs except that the after-tax costs (or revenue requirements) of management practices were used rather than the before-tax costs, and the price of off-site management was used rather than the cost of off-site management (to address above-average profits). Since the compliance costs reflect the cost of the rule for particular entities within society more accurately than the social costs do, compliance costs were used in determining whether it would be less expensive for facilities to use on-site or off-site post-regulatory management practices.

Based on the cost analysis discussed above, EPA estimated the number of existing subtitle C treatment, storage, and disposal facilities (TSDFs) electing to manage TC non-wastewaters on site and the number of subtitle D facilities which would be likely to become subtitle C TSDFs in order to manage their non-wastewaters on-site. (The focus was on on-site management of non-wastewaters, since it was assumed that most facilities would be able to manage wastewaters on site without becoming subtitle C TSDFs.) This was done by first determining the number of facilities that would be likely to choose on-site management as the least-cost management practice for non-wastewaters and then estimating how many of these would be likely to already be subtitle C TSDFs. EPA also estimated the number of new subtitle C generators, by determining how many facilities would generate in excess of 100 kilograms per month of TC waste and then calculating how many of these facilities would be likely to already be subtitle C generators.

c. Economic Impact Methodology. To gauge impacts, EPA compared compliance costs (discussed previously) with average facility costs of production and with cash from operations. Financial data were obtained primarily from the Census and Annual Survey of Manufacturers (U.S. Department of Commerce, Bureau of Census) and were organized by Standard Industrial Classification (SIC) code and facility size. Impacts were estimated at the facility level rather than the firm level, due to lack of data on specific facilities and the firms owning them.

Two ratios were used to identify facilities likely to experience adverse economic effects: compliance cost divided by cost of production (the COP ratio) and cash from operations divided by compliance cost (the CFO ratio). These ratios bound possible effects on individual facilities by examining impacts assuming complete pass-through of compliance costs to customers, on the one hand, and assuming no pass-through of costs, on the other. The COP ratio represents the percentage product price increase for facility output that would be necessary if the entire compliance cost, accompanied by facility profit, were to be passed through to customers in the form of higher prices. A change exceeding five percent is considered an indication of a significant adverse economic impact on a facility. The CFO ratio represents the number of times that a facility's gross margin (profit) would cover the compliance cost if the facility were to fully absorb the cost. For this ratio, a value of less than 20 is considered to represent a significant adverse impact.

EPA then performed an analysis on the facilities experiencing significant economic impacts to identify the potential for facility closures. Those facilities for which the CFO ratio was less than two were considered likely to close.

Impacts on significantly affected product markets were addressed qualitatively by examining market structure and the ability of facilities to pass compliance costs on to customers.

d. Benefits Methodology. The benefits of the final rule were evaluated by considering the reduction in human health risk, the reduction in resource damage, and future cleanup costs avoided that would result from required changes in management practices for affected wastes. These benefits

measures centered primarily on the exposure to contaminants via the ground water medium, since this was the route of exposure addressed by the TC rule; however, a screening analysis of risks via air, due to emissions from surface impoundments, was also conducted to gauge the significance of these risks.

It is important to point out that the benefits measures should not be added. The measures provide alternative ways of evaluating benefits of the rule, and significant overlap between measures does occur.

EPA estimated benefits on a wastestream-by-wastestream basis. To simplify the analysis of benefits, EPA employed a screening analysis to identify two "risk-driving" constituents in each wastestream, one a carcinogen and one a non-carcinogen. These constituents were then used in developing benefit estimates.

A Monte Carlo modeling approach was used to simulate fate and transport of the constituents and subsequent exposure to them under a variety of waste characterizations, hydrogeologic settings, and exposure scenarios. Based on data from EPA's National Survey of Solid Waste Municipal Landfill Facilities (the "Municipal Landfill Survey"), it was assumed that only 46 percent of facilities had down-gradient wells. EPA examined the sensitivity of results to this assumption by assuming, alternatively, that all facilities had down-gradient wells.

Due to the way in which fate and transport of constituents was modeled (using an infinite source, steady-state model), benefits estimates were primarily a function of the number of facilities estimated to manage each wastestream and constituent concentrations in the waste; wastestream volumes did not affect benefits estimates. In contrast, cost analysis results were a function of the number of facilities, waste constituent concentrations, and wastestream volumes.

Worst-case estimates of baseline risk, resource damage, and cleanup costs were developed by assuming that the baseline management practice for both wastewaters and non-wastewaters was an unlined, non-hazardous waste landfill. This is the same assumption that was employed by the Agency in determining regulatory levels for TC constituents. Post-regulatory risk, resource damage, and cleanup costs were estimated by assuming that the wastes managed as hazardous under the TC would be effectively prevented from contaminating ground water and would therefore result in no risk, resource damage, or cleanup costs; only those wastes continuing to be managed as non-hazardous would pose a threat to human health or the environment.

For wastewaters, the baseline risk, resource damage, and cleanup cost due to ground water contamination were based on concentrations of constituents in the influents to waste management units. Consequently, since volatilization of constituents from waste management units was not accounted for, benefits due to reduction in ground water contamination may be overstated.

The three benefits measures used in this analysis are discussed separately below.

1. Human Health Risk Reduction

EPA estimated two types of human health risk: risk to the most exposed individual (MEI) and population risk. Human health risk is defined herein as the probability of injury, disease, or death over a given time (70 years) due to responses to doses of disease-causing agents. The human health risk posed by a waste management practice is a function of the toxicity of the chemical constituents in the wastestream and the extent of human exposure to the constituents. The likelihood of exposure is dictated by hydrogeologic and climatic settings at land disposal units and by the fate and transport of chemical constituents in environmental media.

a. MEI Risk Reduction. MEI risk was based on exposure to the risk-driving constituents. Concentrations of the risk-driving constituents in the waste leachate were selected randomly from the constituents' concentration distributions. A dilution-attenuation factor (DAF), derived from EPA's subsurface fate and transport model (EPACML), was then randomly selected and used to model the fate and transport of the constituents in ground water. (The DAFs were developed using data from the Municipal Landfill Survey on landfill size, hydrogeology, and distance from the unit to the closest drinking water well; see section III.E for further discussion of the model.) By dividing the initial leachate concentrations of the risk-driving constituents by the DAF, exposure concentrations at a down-gradient well were estimated. Risks from ingestion of contaminated ground water were then calculated. The carcinogenic MEI risk was expressed as the probability of the MEI contracting cancer over a 70-year lifetime, and the non-carcinogenic MEI risk was expressed as an exceedance of the health-effects threshold.

Risk estimates were developed in this way for baseline conditions and for the final rule. The difference between the final rule and baseline risk estimates yielded the MEI risk reduction (or benefit).

EPA conducted a separate screening analysis of baseline MEI risks due to air emissions from surface impoundments in order to assess whether potential air risks were significant. This was done by assuming that constituents in wastewaters would potentially volatilize to the air rather than leach to ground water. EPA's Liner Location Model (Ref. 32) was used to estimate concentrations of constituents at an exposure point 200 meters from the edge of the surface impoundment. Both carcinogenic and non-carcinogenic risks were estimated.

b. Population Risk Reduction. Population risk was estimated in much the same way as MEI risk, with the exception that ground water plume areas for risk-driving constituents were used to model the exposure of populations located downgradient from units. The plume areas were developed for a representative hydrogeologic environment, based on data from the Municipal Landfill Survey.

Each plume area contained a gradient of exposure concentrations, with the highest concentration near the unit boundary and the lowest concentration near the outside edge of the plume. By assuming a uniform population density of 1.6 persons per acre, based on the Municipal Landfill Survey, it was possible to estimate the number of persons exposed to each of the concentration levels within each plume.

The population risk for the carcinogenic constituent, based on the constituent's risk-specific dose (RSD), was expressed as the number of cancer cases over a 70-year lifetime. The population risk for the non-carcinogenic constituent, based on the constituent's reference dose (RfD), was expressed as the number of persons exposed to average daily concentrations exceeding the RfD over a 70-year period.

2. Resource Damage Avoided

Resource damage measures the cost associated with replacing contaminated ground water that had been used as a source of drinking water. Resource damage was assumed to result from any contamination of ground water which would render it unsuitable for human consumption; other potential foregone uses, such as industrial or agricultural uses, were not addressed.

If the concentration of a constituent in ground water exceeded a maximum contaminant level (MCL), the ground water was assumed to be damaged. If

the contaminant did not have an MCL but the concentration exceeded a taste and odor threshold or a health effects threshold, the ground water was also assumed to be damaged. Areas of damaged ground water were derived based on a comparison of the constituent's concentration within the plume with the constituent's MCL, taste and odor threshold, or health-based number, in an approach similar to that used to estimate plume areas for population risk.

To place a value on the damaged resource, EPA assumed that an alternative water supply system would have to be built to provide water to persons living above the area of the damaged ground water. The costs of constructing the water supply system included capital and O&M costs; these costs were discounted to the present at a rate of three percent to obtain the resource damage per facility. Addition of resource damage across facilities provided a national estimate.

3. Cleanup Costs Avoided

As an alternative measure of benefits, EPA estimated the cleanup costs avoided as a result of the TC rule. Costs of cleanup of contaminated ground water were estimated by assuming that sites with resource damage in the baseline would eventually require cleanups. To develop an upper bound estimate, it was assumed that sites with resource damage greater than $1,000,000 (present value) would require cleanup.

Cleanup costs were based on an average cost of $15 million per site, with cleanups beginning in 15 years. EPA estimated the average cost of cleanup by examining recent Superfund records of decision (RODs) for sites contaminated with TC constituents that required substantial ground water cleanup efforts. Costs were discounted to present values using a discount rate of three percent.

e. Used Oil Methodology. EPA addressed the impacts of the TC on used oil separately from other wastes for several reasons. First, used oil is generated across a wide variety of industrial sectors. Second, unlike other wastes, it has economic value and can be sold in intermediate or end-use markets; this complicates any analysis of the costs of regulating it as a hazardous waste. Also, data on used oil are quite limited. Finally, it is difficult to accurately estimate quantities of used oil that may exhibit the TC because in practice TCLP filtration is sample-specific and difficult to predict.

The analysis of costs, economic impacts, and benefits associated with used oil was qualitative in nature; no attempt was made to develop national estimates. In determining the quantity of used oil potentially affected, EPA excluded used oil that was: (1) Already hazardous because it exhibits a hazardous waste characteristic (e.g., ignitability); (2) recycled; or (3) generated by "do-it-yourselfers" (i.e., auto owners disposing of crankcase oil). In order to develop worst-case estimates of impacts on used oil, it was assumed that used oil would filter in the TCLP. It was also assumed that the facilities managing used oil were subtitle D facilities. Finally, estimated impacts on used oil did not account for the possible stigma associated with management of used oil as a hazardous waste.

4. Results

Results of the RIA are presented below. These results are approximations that are intended to identify the most significant impacts of the TC rule. As discussed previously, there were no data on the waste types and quantities generated by specific facilities in the different industrial sectors. Therefore, EPA used more aggregated data and focused on those industrial sectors which were most likely to generate significant quantities of TC wastes.

a. Affected Wastes and Facilities. EPA estimated the amount of waste and the number of facilities that would be "affected" by the rule, i.e., that would incur any incremental costs due to required changes in management practices for newly hazardous wastes.

1. Affected Wastes

The overall quantity of waste affected by the TC was driven by wastewaters. EPA estimated the quantity of affected wastewaters to be approximately 730 million metric tons (MMT) per year and the quantity of affected non-wastewaters (sludges and solids) would range from approximately 0.85 MMT/year to 1.8 MMT/year. It should be noted that the affected wastewaters, which would be hazardous wastes, are assumed to be exempt from subtitle C regulation in the post-regulatory scenario due to their management in exempt tanks. However, they would be affected wastes because a change in management practice (from surface impoundments to tanks) would be required.

The industrial sectors with the largest quantities of affected wastewaters were Petroleum Refining (SIC 2911), Organic Chemicals (SIC 286), Synthetic Rubber (SIC 2822), and Cellulosic and Non-Cellulosic Synthetic Fibers (SICs 2823 and 2824). For the lower bound estimate of 0.85 MMT/year of non-wastewaters affected, the sectors with the largest quantities of affected non-wastewaters were Pulp and Paper (SIC 26), Synthetic Fibers, Organic Chemicals, and Pharmaceuticals (SIC 283). For the upper bound estimate of 1.8 MMT/year, industry sectors generating the largest quantities of affected non-wastewaters were Petroleum Refining, Pulp and Paper, Synthetic Fibers, Organic Chemicals, and Wholesale Petroleum Marketing (SIC 517). Certain sectors generate significant quantities of both wastewaters and non-wastewaters due to the wastewater treatment sludges associated with wastewater streams. Most of the affected wastewaters and non-wastewaters are believed to be generated by large facilities.

A total of twelve constituents appeared as "cost-driving" constituents in the analysis. However, benzene was the driving constituent for over 60 percent of the affected waste quantity. Other volume-driving constituents include chloroform (25%), vinyl chloride (17%), and trichloroethylene (15%).

2. Affected Facilities

EPA estimated that between 15,000 and 17,000 generators would be affected by the rule. Costs and additional requirements among these affected facilities will vary (e.g., some may already be RCRA generators or TSDFs, others may need to apply for RCRA permits or send wastes off-site). Over 90 percent of these were small facilities (with fewer than 50 employees). The industries with the most affected large facilities were Hosiery and Knit Fabric Finishing (SIC 225), Wholesale Petroleum Marketing, Organic Chemicals, Petroleum Refining, and Plastics Materials and Resins (SIC 2821). The industries with the most affected small facilities were Wholesale Petroleum Marketing, Hosiery and Knit Fabric Finishing, Miscellaneous Petroleum and Coal Products (SIC 2992), Organic Chemicals, and Plastics Materials and Resins.

3. Sensitivity Analysis of Affected Wastes and Facilities

Changes in certain analytical assumptions had significant effects on the quantity of waste and number of facilities affected by the TC final rule. (Refer to section VI.B.3.a for discussion of the sensitivity analyses which were conducted.) Some of the changes also affected cost and benefit results, as discussed below under cost results and benefit results.

Assuming that oily wastes would not filter in the TCLP, rather than assuming that they would, would have a very significant effect on the quantity of non-

wastewaters affected by the TC. This effect can be seen in the difference between lower bound (assuming oily wastes do not filter) and upper bound (assuming oily wastes filter without complications) estimates of affected quantities of non-wastewaters. Nearly all of the non-wastewaters from Petroleum Refining (including a very large-volume primary treatment sludge), Wholesale Petroleum Marketing, and Petroleum Pipelines are oily wastes.

Assuming that all wastewaters were managed in surface impoundments, rather than some portion being managed by practices exempt under subtitle C, increased affected wastewater quantity significantly to approximately 1,900 MMT/year. It also increased the number of facilities affected in certain sectors.

Finally, assuming that only 10 percent of the facilities would be affected for a waste failing the TC, rather than using the percent of the waste failing, significantly reduced the number of facilities affected by the TC in most industrial sectors.

b. Cost Results—1. *Social Costs and Compliance Costs.* EPA estimated the total social costs of the TC rule (excluding taxes and above-average profits) to be approximately $90 million to $310 million per year (present value $1.3 billion to $5.7 billion); this does not include costs associated with used oil. Compliance costs (which include taxes and above-average profits) ranged from $130 million to $400 million per year (present value $1.9 billion to $6.0 billion). While affected waste quantities were driven by wastewaters, compliance costs (for the scenario where oily wastes fail the TC and no surface impoundment closure costs are incurred) were driven by non-wastewaters due to the significantly higher incremental costs of managing non-wastewaters. Non-wastewaters accounted for over 95 percent of compliance costs.

For the lower bound cost estimate, the industrial sectors with the largest compliance costs were Pulp and Paper, Synthetic Fibers, Organic Chemicals, and Synthetic Rubber. For the upper bound cost estimate, the industrial sectors with the largest compliance costs were Petroleum Refining, Pulp and Paper, Synthetic Fibers, Wholesale Petroleum Marketing, and Organic Chemicals. Constituents driving the cost results were: benzene, chloroform, trichloroethylene, vinyl chloride, and carbon tetrachloride.

Approximately 90 percent of the compliance costs (for the scenario where oily wastes fail the TC and no surface impoundment closure costs are incurred) were incurred by large facilities and 10 percent by small facilities across industrial sectors. A relatively small number of large facilities incurs the majority of compliance costs because large facilities are believed to have much greater waste generation rates than small facilities.

The estimated number of subtitle D facilities seeking permits to become non-commercial subtitle C TSDFs was 40 to 250; this does not include facilities seeking permits for storage or treatment only. Most of the expected permit applicants were in the Pulp and Paper Industry in the lower bound estimate. Most of these new TSDFs in the upper bound estimate were in Petroleum Refining.

The number of existing subtitle C non-commercial TSDFs expected to seek permit modifications to handle TC wastes was between 45 and 220, depending on whether permits are considered for only disposal or for treatment, storage, and disposal. Most of these facilities in the upper bound estimate were in the Wholesale Petroleum Marketing and Petroleum Refining industries.

The number of subtitle C commercial TSDFs (SIC 4953) seeking permit modifications or changes to interim status could be as high as 360, the estimated number of existing commercial TSDFs. Many of these commercial TSDFs are primarily storage facilities.

In addition, the TC rule would result in as many as 15,000 new subtitle C generators. Most of the new generators would be in Wholesale Petroleum Marketing and Hosiery and Knit Fabric Finishing.

2. *Sensitivity Analysis of Costs.* Changes in certain analytical assumptions had significant effects on the social costs and compliance costs of the TC final rule. (Refer to section VI.B.3.a for discussion of the sensitivity analyses which were conducted.) Some of the changes also affected benefit results, as discussed below under benefits results.

Assuming that oily wastes would not filter in the TCLP, rather than assuming that they would, would have a significant effect on both social costs and compliance costs. The Agency estimated, as a lower bound assuming that no oily wastes will fail the TC test, social costs of about $90 million per year and compliance costs of about $130 million per year. By comparison, if it were assumed for the purpose of predicting TCLP results that oily wastes behave like other non-liquid wastes, social costs would be $190 million per year and compliance costs would be $250 million per year.

Assuming that not all facilities would be able to convert within six months from surface impoundments to tanks for management of their TC wastewaters, rather than assuming that all facilities would be able to convert, significantly increased the cost of the rule. Based on landfill closure of impoundments, this assumption added approximately $120 million to annual social costs and $140 million to annual compliance costs.

Splitting wastestream quantity evenly between small and large facility size categories, rather than based on value of shipments, shifted wastes from large to small facilities. While this did not affect the overall costs greatly, it significantly decreased compliance costs for large facilities and increased them for small facilities.

Finally, assuming that only 10 percent of the facilities would be affected for a waste failing the TC, rather than using the percent of the waste failing, significantly reduced social costs and compliance costs due to the larger quantities of waste being managed at a smaller number of facilities and the resultant economies of scale. The estimated number of new subtitle C TSDFs, existing TSDFs seeking permit modifications, and new subtitle C generators also decreased significantly.

c. Economic Impact Results—1. *Significantly Affected Facilities.* Based on the economic impact criteria discussed previously the estimated total number of significantly affected facilities was 65 to 81, of which most (51 to 66) are large. The fact that most of the significantly affected facilities are large can be partially explained by the fact that data indicate there are no small facilities in certain sectors (e.g., Cellulosic Synthetic Fibers). Another reason for the preponderance of significantly affected large facilities is that for some wastes, total compliance costs are less for small facilities than for large facilities because large facilities are believed to generate significantly more waste.

In the lower bound estimates, significantly affected facilities were expected in four industrial sectors: Pulp and Paper, Synthetic Rubber, Synthetic Fibers, and Organic Chemicals. In the lower bound estimates the Pulp and Paper industry was predicted to have the greatest number of significantly affected facilities (35), of which 30 are large facilities. The synthetic rubber industry had the highest number of significantly affected small facilities (8), out of a total of 14 significantly affected small facilities. None of the industries examined were expected to suffer facility closures as a result of the TC.

In the upper bound estimates, significantly affected facilities were expected in seven industries: Pulp and Paper, Synthetic Rubber, Synthetic Fibers, Organic Chemicals, Textiles, Pharmaceuticals, and Plastics and Resins. Pulp and paper had the largest number of significantly affected facilities—36 out of 80 for all facilities.

2. Effects on Product and Capital Markets

The industries with significantly affected facilities have very little potential to pass compliance costs on to consumers in the form of higher prices. These industries produce primarily intermediate goods (e.g., rubber, paper, fibers, and chemicals) which are used in a number of subsequent processes (e.g., manufacturing and fabrication) before they reach consumer markets. The users of these intermediate products have access to similar or identical products from U.S. suppliers that are not significantly affected by the TC and from foreign suppliers; because substitutes are available, these users would not be forced to pay higher prices for the intermediate products.

While results suggest that prices in product markets will not be affected, at least some impact is likely on capital markets. Because affected facilities will not be able to pass compliance costs through to buyers in the form of higher prices, they will experience lower profits. Lower profits will reduce the value of capital tied up in these facilities. However, as most of the affected facilities are part of integrated production systems and are owned by large firms with significant asset holdings, the effect on capital markets (i.e., stock prices and bond ratings) should be relatively small.

3. Sensitivity Analysis of Economic Impacts.

A change in one of the analytical assumptions had significant effects on economic impacts due to the TC final rule. Refer to section VI.B.3.a for discussion of the sensitivity analyses which were conducted.

Splitting wastestream quantity evenly between small and large facility size categories, rather than based on value of shipments, shifted wastes from large to small facilities. Under the scenario where oily wastes fail the TC and no surface impoundment closure costs are incurred, this resulted in nearly 40 additional small facilities with significant economic impacts and 10 small facility closures.

d. Benefits Results. EPA estimated the benefits of regulating TC wastes on a wastestream by wastestream basis; results of this analysis are presented in Table VI–3. As discussed in the benefits methodology section, results for different benefit measures (human health risk, resource damage, and cleanup costs avoided) are likely to overlap and should not be added.

TABLE VI–3.—BENEFITS OF THE TC RULE

Reduction in MEI Risk:	
• Reduction in Carcinogenic Risk (number of facilities with risk greater than 1×10E-5 at down-gradient well).	370 to 780.
• Reduction in Non-Carcinogenic Risk (number of facilities with exposure above a health-based threshold at downgradient well).	8.
Reduction in Population Risk:	
• Reduction in Carcinogenic Risk (number of cancer cases over 70 years).	6.
• Reduction in Non-Carcinogenic Risk (number of persons with exposure above a health-based threshold at downgradient wells).	320.
Reduction in Resource Damage (present value, millions of 1988 dollars).	3,800.
Cleanup Costs Avoided (present value, millions of 1988 dollars).	Up to 15,000.

1. MEI Risk

As can be seen from the table, there is a potentially significant reduction under the final rule in the carcinogenic risk to the most exposed individual (MEI). There are from 370–780 fewer facilities managing wastes that present risks to the most exposed individual (MEI) greater than $1\times10E^{-5}$ under the final rule than there were under baseline conditions. The industrial sectors driving these benefits include Wholesale Petroleum Marketing (SIC 517) and Miscellaneous Plastics Products (SIC 3079). The constituent driving most of these benefits is benzene. The difference between the lower and upper bounds results from certain oily wastes that are unregulated in the lower bound.

For non-carcinogenic MEI risk, there are 8 fewer facilities managing wastewaters where the exposure to a non-carcinogenic constituent exceeds the reference dose (RfD) under the final rule than under baseline conditions. Wastes from Wholesale Petroleum Marketing drive these benefits results. Cresols are the risk-driving constituents.

The Wholesale Petroleum Marketing sector presents significant risks due to the large number of facilities managing wastewaters and non-wastewaters. The number of facilities in this sector estimated to manage wastewaters and non-wastewaters are 1,290 and 1,050 facilities, respectively; this compares with 1,900 and 8,600 facilities, respectively, managing affected wastewaters and non-wastewaters across all industrial sectors.

A screening analysis of MEI risks due to air emissions from surface impoundments was conducted to gauge the potential risk via the air medium. This analysis indicated that in sectors other than Wholesale Petroleum Marketing approximately 20 percent of modeled facilities had carcinogenic risks greater than $1\times10E^{-5}$ and 5 percent had non-carcinogenic doses greater than the RfD; MEI air risks from Wholesale Petroleum Marketing were less than $1\times10E^{-6}$. Benzene contributed most of the carcinogenic risks while phenol was responsible for most of the non-carcinogenic risks.

The industries generating wastes with high MEI air risks differ to some extent from those generating wastes with high MEI ground water risks. The industries generating wastes with high MEI air risks include Pulp and Paper, Plastics Materials and Resins, Synthetic Rubber, Cellulosic and Non-Cellulosic Synthetic Fibers (SICs 2823 and 2824), and Organic Chemicals.

There is some potential overlap in estimates of air and ground water risk. The wastewater MEI risks via ground water were based on the assumption that all the constituent mass was available for leaching to ground water; in contrast, the air risks assumed some percentage of constituent mass would volatilize from impoundments. As a result, the wastewater MEI risks via ground water are likely to be overstated.

2. Population Risk

Based on a very limited analysis of population risk, EPA estimates that there would be six fewer cancer cases over the 70-year modeling period due to the final rule. Wholesale Petroleum Marketing (constituent: benzene) and Plastics and Resins (SIC 2821) (constituent: vinyl chloride) drive these benefits. The reduction in number of persons exposed to non-carcinogens at concentrations greater than the RfDs was estimated to be 320 over a 70-year period. Sawmills and Planing Mills (SIC 2421) and Organic Chemicals (pentachlorophenol and methyl ethyl keytone) drive these results.

3. Resource Damage

The total reduction in resource damage would be approximately $3.8 billion (present value). Wholesale Petroleum Marketing and Miscellaneous Plastics Products are the industrial sectors driving resource damage benefits. Benzene is the driving constituent.

4. Cleanup Costs Avoided

Estimated cleanup costs avoided due to the final rule ranged up to $15 billion (present value). Under the assumption that all sites with significant resource damage (i.e., resource damage greater than $1,000,000 (present value)) would require cleanup, approximately 1,600 facilities would require cleanup.

5. Sensitivity Analysis of Benefits

Changes in certain analytical assumptions had significant effects on the benefits of the TC final rule. (Refer to sections VI.B.3. a and d for discussion of the sensitivity analyses which were conducted.) Some of the changes also affected cost results, as discussed under cost results.

Assuming that oily wastes would not filter in the TCLP, rather than assuming that they would, would reduce the benefits associated with non-wastewaters, as can be seen in the lower bound estimates indicated in the results above. This would result primarily from the significant reduction in the number of facilities managing non-wastewaters in Wholesale Petroleum Marketing.

Assuming that all wastewaters were managed in surface impoundments, rather than some portion being managed by practices exempt under subtitle C, would increase the number of facilities affected in many sectors and increase benefits significantly. Benefits for wastewaters could increase by approximately 10 times since there would be 10 times as many facilities with surface impoundments.

Assuming that only 10 percent of the facilities would be affected for a waste failing the TC, rather than using the percent of the waste failing, significantly reduced the number of facilities affected by the TC in all industrial sectors. This would significantly reduce benefits as a result, since fewer facilities would be managing wastes.

Assuming that all facilities have down-gradient wells, rather than assuming only 46% have down-gradient wells, would increase benefit results by a factor of approximately two.

e. Cost-Effectiveness. The Agency estimated the cost-effectiveness of the final rule and of several regulatory alternatives. This discussion is presented in the regulatory impact analysis document, which is part of the public docket for the rule.

f. Used Oil Results. Used oil is generated across a wide variety of industrial sectors. Some generators manage or dispose of their used oil directly while others provide their used oil to the used oil management system (UOMS), a system of intermediate collectors and processors (Ref. 33). Firms in the UOMS then re-refine or process the used oil and/or sell it for various end uses.

Under the worst-case assumption that used oil would not create TCLP filtration problems, EPA found based on constituent concentration data (see Ref. 8), that virtually all used oil would fail the TC. EPA determined that three end-use management practices for used oil would be affected: landfilling/incineration, dumping, and road oiling.

Once used oil became TC hazardous, it would have to be shifted to other end-use management practices. Much of the used oil that is currently dumped or applied directly to roads by generators would probably be collected and sold to the UOMS. Firms in the UOMS that currently sell used oil for road oiling would generally shift this oil to other management practices, such as re-refining or burning as a fuel. Used oil that is managed by landfilling or incineration in subtitle D units would likely be shifted to management in subtitle C units.

The shift in management practices would impose costs on used oil generators, the UOMS, and end-users of used oil. Used oil generators currently providing used oil to the UOMS would be likely to pay somewhat higher collection costs due to pass-through of compliance costs by firms in the UOMS. Generators that currently manage their wastes by road oiling would incur storage and collection costs for their used oil as well as costs for a road-oiling substitute. Generators directly managing their wastes by dumping would incur costs for storage and collection. Firms in the UOMS that sell used oil for road oiling would be forced to sell the oil in less profitable markets, and some firms could close if unable to enter another market. Firms in the UOMS could also incur costs for disposal of low quality used oil and related wastes in subtitle C (rather than subtitle D) units if these wastes were TC hazardous; as discussed above, some of these costs could be passed on to used oil generators. Firms that re-refine used oil could benefit from the TC rule, since a greater volume of used oil would potentially be available at a lower price. Finally, end-users that purchase used oil for road oiling would incur costs for an alternative dust suppressant.

The shift in management practices could also result in certain benefits. A previous study of carcinogenic risks from used oil management practices (Ref. 34) indicates that dumping of used oil may present significant risks relative to other management practices (with the possible exception of burning in boilers, where risks are more comparable). Road oiling appears to present more significant risks than recycling and comparable or fewer risks relative to burning in boilers or landfill disposal. It is difficult to draw definitive conclusions concerning benefits due to the different constituent profiles and population densities associated with each of the management practices in the risk analysis.

C. Regulatory Flexibility Analysis

1. Approach

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires that whenever an agency publishes a notice of rulemaking, it must prepare a Regulatory Flexibility Analysis (RFA) that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). An RFA is unnecessary, however, if the Agency's administrator certifies that the rule will not have a significant economic effect on a substantial number of small entities.

EPA examined the final rule's potential effects on small entities as required by the Regulatory Flexibility Act. Three measures, based on EPA guidelines for conducting an RFA, were used to determine whether the rule would have a "significant economic effect" on small entities: the ratio of compliance cost to cost of production, the ratio of compliance cost to value of sales, and the ratio of cash from operations to compliance cost (the last ratio being used to assess potential closures). Two of the three criteria, the ratio of compliance cost to cost of production and the ratio of cash from operations to compliance cost, are discussed in section VI.B.3.c. The third, the ratio of compliance cost to value of sales, was estimated for small and large facilities; if the difference between these ratios was greater than ten percent, this indicated a significant impact.

The guidelines for conducting RFAs are somewhat ambiguous with respect to evaluating impacts based on the third criterion. Determining whether the difference between ratios exceeds ten percent can be done by subtracting the large facility ratio from the small facility ratio or by dividing the small facility ratio by the large facility ratio. Dividing the small facility ratio by the large facility ratio may incorrectly indicate siqnificant impacts on small facilities when both ratios are very small but the small facility ratio is larger than the large facility ratio. (For example, a small

facility ratio of 0.00002 divided by a large facility ratio of 0.00001 would indicate a significant impact on small businesses based on the division approach, despite the fact that the very low ratio of compliance cost to value of sales for small facilities indicates little impact on small facilities.) Therefore, the division approach must be interpreted with caution.

A "substantial number" of small entities was assumed to be 20 percent or more of the population of small businesses, small organizations, or small government jurisdictions within the universe of facilities affected by the rule.

The Agency defined a small business as a business employing 50 employees or less. (Standard Small Business Administration criterion is 500 employees.) EPA decided to use the 50 employee definition of a small business because the RIA estimates facility-level impacts, and the SBA definition applies to entire firms. The SBA definition would designate most of the facilities in the examined industries as small businesses, which would obscure differential impacts on smaller facilities.

Impacts on small businesses related to costs of compliance for used oil and contaminated soils were not examined due to lack of data on the facilities experiencing those costs.

2. Results

The only entities found to be affected by the final rule were small businesses, defined here as businesses employing fewer than 50 persons. No small organizations or small government jurisdictions were identified as potential TC waste generators in the TC industry studies which form the foundation for this analysis.

The Agency did not identify any industries in which 20 percent or more of the small businesses were significantly affected based on the ratio of compliance cost to cost of production, the ratio of cash from operations to compliance cost, or the ratio of compliance cost to value of sales (using the subtraction approach). Using the division approach for the ratio of compliance cost to value of sales indicated that small businesses in four sectors (including Pulp and Paper, Synthetic Rubber, Organic Chemicals, and Wholesale Petroleum Marketing) would be significantly affected. However, since the small facility and large facility ratios were both quite small (small facility ratios were less than 0.03), the Agency does not expect significant small business impacts in these sectors. Based on these results, EPA has concluded that today's final rule will not have a significant effect on a substantial number of small entities. As a result of this finding, EPA has not prepared a formal RFA in support of the rule. More detailed information on small business impacts is available in the RIA for this rule.

D. Response to Comments on RIA for June 13, 1986 Proposal

EPA received many comments on the RIA for the proposed TC rule. This section presents a general summary and analysis of the public comments concerning the original RIA; all of the comments are addressed in the background document for this final rule. Major issues addressed by commenters included consideration of particular industries, specific aspects of cost and benefit methodologies, cost and benefit estimates, and the assessment of small business impacts.

1. Industries Included in the Analysis

The majority of comments on the RIA for the proposed rule concerned the absence of specific industrial sectors from the group examined for potential impacts. Other commenters criticized the RIA for not considering the effects of the TC on end users of products and on facilities such as Publicly Owned Treatment Works and Municipal Landfills.

Industries that commenters suggested should have been evaluated included natural gas production, manufacturing of a variety of products, including forest products, pharmaceuticals, automobiles, plastics, metals, polyvinyl chloride, semi-conductors, wire and cables, and waste management. The Agency agrees with commenters that a number of industrial sectors were not addressed in the RIA for the proposed rule. The Agency notes, however, that several of the wastestreams that commenters believed should have been included in the RIA (based upon the proposed regulatory levels) are not expected to be defined as hazardous based upon the final regulatory levels being promulgated today. One of the fundamental problems with determining which industries would potentially be affected by the TC is lack of data on currently non-hazardous wastes. Since these wastes are currently outside the subtitle C system, requirements for information gathering related to them are minimal.

The Agency made extensive efforts, in preparing the RIA for the TC final rule, to obtain data on the industrial sectors potentially affected by the TC. These data were derived from a variety of sources. The Agency contacted numerous trade associations and individual facilities and collected pertinent EPA and other government publications. In addition, EPA prepared a series of TC industry study reports on those sectors most likely to generate significant quantities of TC wastes.

In preparing its TC industry studies, EPA first conducted preliminary studies which examined a large number of industries, with emphasis on identifying whether or not TC constituents would be likely to be present in industry wastes. Based on the preliminary studies, EPA completed detailed profiles of potentially affected industries for use in the final RIA. The Agency examined the potential for impacts on a number of industries that were not considered in the RIA for the proposed rule, as well as reconsidering some that were addressed in that RIA. Table VI–1 in section VI.B compares the coverage of industries for both the proposed rule RIA and the final rule RIA and indicates the industries for which detailed quantitative analysis was conducted.

Commenters also criticized the proposed rule RIA for not considering effects on end-users of products containing TC constituents. Examples of such end-user industries include agricultural chemical users, transporters, automotive maintenance facilities, petroleum retailers, medical facilities, and research laboratories. The Agency recognizes that TC toxicants exist in a variety of substances, and that end-users as well as producers of products containing TC constituents could be affected by the rule. Some end-users not identified in the RIA may be affected, but there is no information to quantify these potential impacts. The Agency believes that some of the impacts on affected end users may be mitigated by small quantity generator regulations under 40 CFR 261.5.

Finally, several commenters questioned EPA's assessment of impacts on Publicly Owned Treatment Works (POTWs), resource recovery facilities, public water suppliers, municipal landfills, the electrical services industry, and currently regulated RCRA facilities. As discussed previously in section III.K.2, the Agency has tested a number of POTW sludges to determine whether or not these sludges would be considered hazardous under the TC; the data generally indicate that these wastes would not be affected by the TC (Ref. 8). Because the final regulatory level for chloroform is significantly higher than originally proposed, EPA believes that public water suppliers also are unlikely to generate TC wastes. The Agency analyzed wastestreams generated by the Electrical Services

industry. These wastes were excluded from the RIA because they are fossil fuel combustion wastes, which are exempt from subtitle C regulation until a determination is made as to whether they should be regulated as hazardous. The Agency acknowledges that some waste generated by waste management facilities may exhibit the TC; however, most of these wastestreams that commenters believed should be included are not expected to exhibit the TC under the final regulatory levels. Finally, impacts on currently regulated RCRA facilities (in the industries included in the RIA) were addressed in the RIA.

2. Estimation of Costs and Economic Impacts

Many commenters expressed concern that the compliance cost estimates for facilities included in the economic impact analysis did not capture many of the expenditures faced by handlers of hazardous waste. The most common criticism was directed at the omission of the cost for actually performing the TCLP. Other commenters mentioned insurance costs and costs associated with RCRA permit applications. Another large group of comments concerned the costs for permitting and retrofitting the large universe of surface impoundments containing wastewaters which would exhibit the TC. In addition, a number of commenters contended that the RIA significantly underestimated potential economic impacts of the TC.

Other commenters claimed that the expense of the highly sophisticated equipment and specially trained personnel necessary for the testing of wastes would pose a significant burden on many firms, especially those without on-site laboratory facilities. The Agency recognizes that testing of wastes could pose a significant expense for firms that choose to test their wastes. On the other hand, there is currently no RCRA requirement for generators to test their wastes; the determination of hazardousness may be made based on either laboratory analysis of the waste or on knowledge of the waste, raw materials, and production processes. The Agency expects that many generators will rely on the latter method, and elect not to perform the TCLP. The Agency is still considering promulgating a testing requirement at a future date. If a testing requirement is proposed, potential costs of testing will be analyzed in detail.

Recognizing that administrative and insurance costs can constitute a significant portion of waste management costs, the Agency considered these in cost estimates in the final RIA. In addition, the cost of preparing RCRA permit applications is considered in the cost of subtitle C waste management, as are items such as liability insurance, personnel training, and contingency planning.

In response to comments that surface impoundment impacts were understated, the Agency examined the effect of the TC rule on wastewaters and estimated the costs of compliance with subtitle C requirements. The Agency assumed in the final RIA that, based on least-cost management practices, surface impoundments would not have to be retrofitted. Instead, it was assumed that affected wastewaters would be segregated and treated in a separate tank system, while remaining non-hazardous wastewaters could continue to be managed in the impoundments. In deriving an upper bound estimate of costs, it was assumed that some impoundments would have to undergo subtitle C clean closure.

Given the broad scope of the TC rule and the general lack of data on industries and facilities managing currently non-hazardous wastes, the Agency agrees that economic impacts on certain sectors may have been underestimated in the RIA for the proposed rule. As discussed above, the Agency has made significant efforts in the final RIA to more accurately characterize the sectors potentially affected by the TC and to estimate the actual impacts on affected facilities.

3. Estimation of Benefits

Several commenters remarked on the original methodology used for the estimation of benefits. The most frequent target of criticism was the assumption that all contaminated aquifers would be cleaned up as a result of the TC. Commenters also questioned the validity of assuming that ground water resource conditions in North Carolina were representative of conditions across the entire United States.

Commenters on the use of aquifer cleanup as the basis for estimating benefits of the proposed rule asked for justification of the assumption that all aquifers would be cleaned up and an explanation of the benefits to human health and the environment which would result from the cleanup. The Agency used a different methodology to estimate benefits for the final RIA than was used for the original RIA. For the final RIA, EPA examined three potential types of benefits: human health risk reduction, resource damage avoided, and cleanup costs avoided. The assumption that all aquifers would be cleaned up was not used in the final RIA. In estimating benefits based on cleanup costs avoided through controlled subtitle C management of TC wastes, EPA assumed in the RIA for the final rule that, for the near term, the subtitle D facilities with down-gradient wells and with at least some resource damage (as predicted by the resource damage analysis) would be the most likely candidates for cleanup.

The Agency agrees with the comments that ground water resource conditions in North Carolina may not be representative of conditions across the entire United States. As a result, in the final RIA EPA used distributions of hydrogeologic parameters which were representative of nationwide conditions, rather than relying on hydrogeologic information from one state.

4. Cost-Benefit Comparisons

In general, commenters argued that the RIA overestimated likely benefits of the proposed rule while underestimating the potential impacts. Commenters believed that the TC would bring large quantities of waste into the subtitle C system with little or no attendant environmental or health benefit. One commenter claimed that, after all indirect impacts are considered, the net benefits of the rule could be negative. Another commenter, however, stated that benefits were actually underestimated because of assumptions in the baseline scenario.

The Agency has used an improved methodology and additional data in the final RIA. EPA believes that the final RIA provides reasonable estimates of the potential costs and benefits of the rule. As presented in this section, the final RIA does indicate that the TC will bring relatively large quantities of waste into the subtitle C system, and also indicates that there will be attendant benefits. The Agency used cost and benefit estimates to compare relative costs and benefits of the various regulatory options. The analyses were conducted separately using approaches constructed to make the best possible use of available data. The separate analyses were not meant to be used to produce absolute measures of cost effectiveness. The RIA contains discussion of the Agency's evaluation and comparison of cost and benefit results.

5. Small Business Analysis

The Agency received many comments on its assessment of the effects of the proposed TC on small businesses. One group of comments focused on the definition chosen by EPA for small businesses. The Agency was also criticized for its threshold for

determining if a "substantial number" of small businesses would suffer significant economic impacts, and therefore necessitate the preparation of a full Regulatory Flexibility Analysis. Finally, many commenters felt that the analysis severely underestimated the impact of the rule on small businesses.

Commenters asked why the Agency did not use the standard Small Business Administration (SBA) criterion of 500 employees to define a small business. The Agency decided to use the 50 employee definition of a small business because the RIA estimates facility-level impacts, and the SBA definition applies to entire firms. In the absence of data to estimate firm-level impacts, the Agency chose the 50 employee cutoff as an appropriate small facility definition for the RIA. The SBA definition would designate most of the establishments in most of the examined industries as small facilities, which would obscure differential impacts on smaller facilities.

The Agency was criticized for using a 20 percent threshold for determining if a "substantial number" of small businesses would be significantly affected. Commenters claimed that it was arbitrary to consider the small business impact negligible if "only 19.9 percent" of small business were significantly affected. The Agency recognizes that, for an individual facility, the magnitude of impacts is not altered by the number of other facilities which are significantly affected. Nevertheless, the Agency believes that 20 percent is a reasonable benchmark for defining a "substantial number" of small businesses. The 20 percent threshold is commonly applied in RIAs conducted by EPA.

A large number of commenters criticized the overall conclusions of the small business analysis, declaring that the analysis severely underestimated the economic effects of the TC on small businesses. Commenters maintained that the universe of small businesses was inadequately addressed. Examples of small businesses not included in the analysis which commenters felt should have been considered included service stations and vehicle maintenance facilities. Commenters also mentioned the expense of performing the TCLP, claiming that it was an especially significant hardship for small businesses.

As explained in the general discussion of the industrial sectors included in the RIA, the Agency made extensive efforts to identify and include sectors potentially affected by the TC rule, including end users of products. And, as discussed under the comments on incorporating testing costs, these costs were not included since generators are not currently required to test their wastes. Although EPA maintains that a full RFA is not necessary for the TC rule, it realizes that the impact of the rule could be significant for individual small enterprises.

E. Paperwork Reduction Act

The information collection requirements in this rule have been approved by the Office of Management and Budget (OMB) under the Paper Reduction Act, 44 U.S.C. 3501 et seq., and have been assigned the following OMB control numbers: 2050–0007, Land Disposal Permitting Standards; 2050–0008, RCRA Closure/Post-Closure; 2050–0009, Hazardous Waste Storage and Treatment Facilities; 2050–0011, Contingency Plans for Hazardous Waste Facilities; 2050–0012, General Facility Operating Requirements; 2050–0013, Operating Record for Hazardous Waste Facilities; 2050–0028, Notification of a Hazardous Waste Activity; 2050–0033, Reporting, Recordkeeping, and Planning for Ground-Water Monitoring; 2050–0034, RCRA Hazardous Waste Permit Application Part A; 2050–0036, RCRA Financial Assurance Requirements; 2050–0037, Recordkeeping and Reporting for RCRA Permitees; and 2050–0039, Uniform Hazardous Waste Manifest for Generators and Transporters.

VII. References

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List of Subjects in 40 CFR Parts 261, 264, 265, 268, 271, and 302

Administrative practice and procedure, Air pollution control, Chemicals, Confidential business information, Hazardous materials transportation, Hazardous substances, Hazardous waste, Indian lands, Intergovernmental relations, Natural resources, Nuclear materials, Penalties, Pesticides and pests, Radioactive materials, Recycling, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply, Waste treatment and disposal.

Dated: March 5, 1990.

William K. Reilly,

Administrotor.

For the reasons set out in the preamble, Chapter I of Title 40 of the Code of Federal Regulations is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6922.

2. Section 261.4 is amended by revising paragraphs (b)(6)(i) introductory text, and (b)(9) and by adding paragraph (b)(10) to read as follows:

§ 261.4 Exclusions.

* * * * *

(b) * * *

(6)(i) Wastes which fail the test for the Toxicity Characteristic because chromium is present or are listed in subpart D due to the presence of chromium, which do not fail the test for the Toxicity Characteristic for any other constituent or are not listed due to the presence of any other constituent, and which do not fail the test for any other characteristic, if it is shown by a waste generator or by waste generators that:

* * * * *

(9) Solid waste which consists of discarded wood or wood products which fails the test for the Toxicity Characteristic solely for arsenic and which is not a hazardous waste for any other reason or reasons, if the waste is generated by persons who utilize the arsenical-treated wood and wood products for these materials' intended end use.

(10) Petroleum-contaminated media and debris that fail the test for the Toxicity Characteristic of § 261.24 and are subject to the corrective action regulations under part 280 of this chapter.

3. Section 261.8 is added to subpart A to read as follows:

§ 261.8 PCB Wastes Regulated Under Toxic Substance Control Act

The disposal of PCB-containing dielectric fluid and electric equipment containing such fluid authorized for use and regulated under part 761 of this chapter and that are hazardous only because they fail the test for the Toxicity Characteristic (Hazardous Waste Codes D018 through D043 only) are exempt from regulation under parts 261 through 265, and parts 268, 270, and 124 of this chapter, and the notification requirements of section 3010 of RCRA.

4. Section 261.24 is revised to read as follows:

§ 261.24 Toxicity characteristic.

(a) A solid waste exhibits the characteristic of toxicity if, using the test methods described in Appendix II or equivalent methods approved by the Administrator under the procedures set forth in §§ 260.20 and 260.21, the extract from a representative sample of the waste contains any of the contaminants listed in Table 1 at the concentration equal to or greater than the respective value given in that Table. Where the waste contains less than 0.5 percent filterable solids, the waste itself, after filtering using the methodology outlined in Appendix II, is considered to be the extract for the purpose of this section.

(b) A solid waste that exhibits the characteristic of toxicity, but is not listed as a hazardous waste in subpart D, has the EPA Hazardous Waste Number specified in Table 1 which corresponds to the toxic contaminant causing it to be hazardous.

TABLE 1.—MAXIMUM CONCENTRATION OF CONTAMINANTS FOR THE TOXICITY CHARACTERISTIC

EPA HW No.[1]	Contaminant	CAS No.[2]	Regulatory Level (mg/L)
D004	Arsenic	7440-38-2	5.0
D005	Barium	7440-39-3	100.0
D018	Benzene	71-43-2	0.5
D006	Cadmium	7440-43-9	1.0
D019	Carbon tetrachloride.	56-23-5	0.5
D020	Chlordane	57-74-9	0.03
D021	Chlorobenzene	108-90-7	100.0
D022	Chloroform	67-66-3	6.0
D007	Chromium	7440-47-3	5.0.
D023	o-Cresol	95-48-7	[4] 200.0
D024	m-Cresol	108-39-4	[4] 200.0
D025	p-Cresol	106-44-5	[4] 200.0
D026	Cresol		[4] 200.0
D016	2,4-D	94-75-7	10.0
D027	1,4-Dichlorobenzene.	106-46-7	7.5
D028	1,2-Dichloroethane.	107-06-2	0.5
D029	1,1-Dichloroethylene.	75-35-4	0.7
D030	2,4-Dinitrotoluene.	121-14-2	[3] 0.13
D012	Endrin	72-20-8	0.02
D031	Heptachlor (and its hydroxide).	76-44-8	0.008
D032	Hexachlorobenzene.	118-74-1	[3] 0.13
D033	Hexachlorobutadiene.	87-68-3	0.5
D034	Hexachloroethane.	67-72-1	3.0
D008	Lead	7439-92-1	5.0
D013	Lindane	58-89-9	0.4
D009	Mercury	7439-97-6	0.2
D014	Methoxychlor	72-43-5	10.0
D035	Methyl ethyl ketone.	78-93-3	200.0
D036	Nitrobenzene	98-95-3	2.0
D037	Pentrachlorophenol.	87-86-5	100.0
D038	Pyridine	110-86-1	[3] 5.0
D010	Selenium	7782-49-2	1.0
D011	Silver	7440-22-4	5.0
D039	Tetrachloroethylene.	127-18-4	0.7
D015	Toxaphene	8001-35-2	0.5
D040	Trichloroethylene.	79-01-6	0.5
D041	2,4,5-Trichlorophenol.	95-95-4	400.0
D042	2,4,6-Trichlorophenol.	88-06-2	2.0
D017	2,4,5-TP (Silvex)	93-72-1	1.0
D043	Vinyl chloride	75-01-4	0.2

[1] Hazardous waste number.
[2] Chemical abstracts service number.
[3] Quantitation limit is greater than the calculated regulatory level. The quantitation limit therefore becomes the regulatory level.
[4] If o-, m-, and p-Cresol concentrations cannot be differentiated, the total cresol (D026) concentration is used. The regulatory level of total cresol is 200 mg/l.

5. Section 261.30 is amended by revising paragraph (b) to read as follows:

§ 261.30 General.

* * * * *

(b) The Administrator will indicate his basis for listing the classes or types of wastes listed in this subpart by employing one or more of the following Hazard Codes:

Ignitable Waste	(I)
Corrosive Waste	(C)
Reactive Waste	(R)
Toxicity Characteristic Waste	(E)
Acute Hazardous Waste	(H)
Toxic Waste	(T)

Appendix VII identifies the constituent which caused the Administrator to list the waste as a Toxicity Characteristic Waste (E) or Toxic Waste (T) in §§ 261.31 and 261.32.

* * * * *

6. Appendix II of part 261 is revised to read as follows:

Appendix II—Method 1311 Toxicity Characteristic Leaching Procedure (TCLP)

1.0 Scope and Application

1.1 The TCLP is designed to determine the mobility of both organic and inorganic contaminants present in liquid, solid, and multiphasic wastes.

1.2 If a total analysis of the waste demonstrates that individual contaminants are not present in the waste, or that they are present but at such low concentrations that the appropriate regulatory thresholds could not possibly be exceeded, the TCLP need not be run.

1.3 If an analysis of any one of the liquid fractions of the TCLP extract indicates that a regulated compound is present at such high levels that even after accounting for dilution from the other fractions of the extract the concentration would be above the regulatory threshold for that compound, then the waste is hazardous and it is not necessary to analyze the remaining fractions of the extract.

1.4 If an analysis of extract obtained using a bottle extractor shows that the concentration of any regulated volatile contaminant exceeds the regulatory threshold for that compound, then the waste is hazardous and extraction using the ZHE is not necessary. However, extract from a bottle extractor cannot be used to demonstrate that the concentration of volatile compounds is below the regulatory threshold.

2.0 Summary of Method (see Figure 1)

2.1 For liquid wastes (i.e., those containing less than 0.5 percent dry solid material), the waste, after filtration through a 0.6 to 0.8-um glass fiber filter, is defined as the TCLP extract.

2.2 For wastes containing greater than or equal to 0.5 percent solids, the liquid, if any, is separated from the solid phase and stored for later analysis; the solid phase, if necessary, is reduced in particle size. The solid phase is extracted with an amount of extraction fluid equal to 20 times the weight of the solid phase. The extraction fluid employed is a function of the alkalinity of the solid phase of the waste. A special extractor vessel is used when testing for volatile contaminants (see Table 1 for a list of volatile compounds). Following extraction, the liquid extract is separated from the solid phase by filtration through a 0.6 to 0.8-um glass fiber filter.

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Figure 1 Method 1311 Flowchart

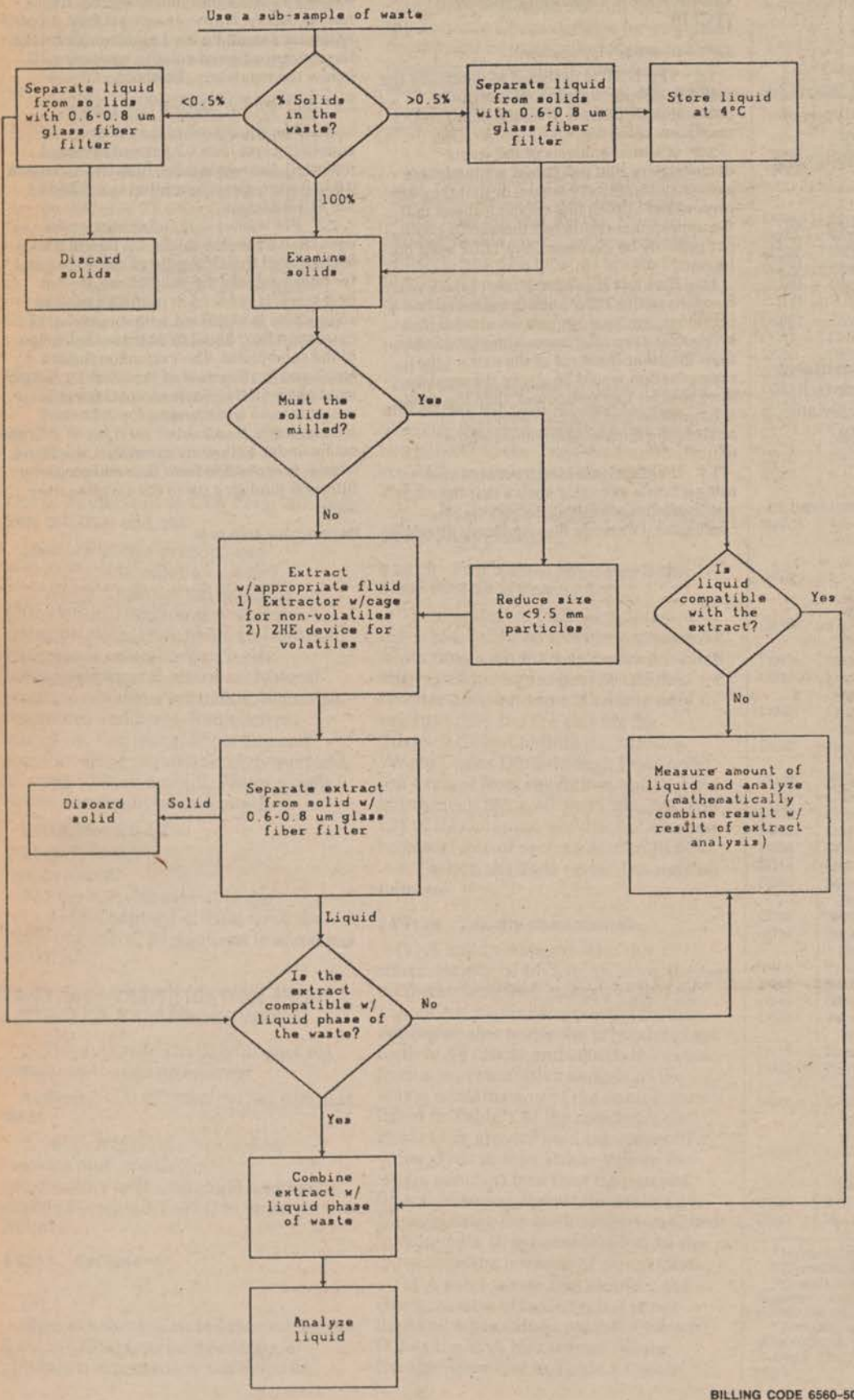

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TABLE 1.—VOLATILE CONTAMINANTS [1]

Compound	CAS no.
Acetone	67-64-1
Benzene	71-43-2
n-Butyl alcohol	71-36-3
Carbon disulfide	75-15-0
Carbon tetrachloride	56-23-5
Chlorobenzene	108-90-7
Chloroform	67-66-3
1,2-Dichloroethane	107-06-2
1,1-Dichloroethylene	75-35-4
Ethyl acetate	141-78-6
Ethyl benzene	100-41-4
Ethyl ether	60-29-7
Isobutanol	78-83-1
Methanol	67-56-1
Methylene chloride	75-09-2
Methyl ethyl ketone	78-93-3
Methyl isobutyl ketone	108-10-1
Tetrachloroethylene	127-18-4
Toluene	108-88-3
1,1,1-Trichloroethane	71-55-6
Trichloroethylene	79-01-6
Trichlorofluoromethane	75-69-4
1,1,2-Trichloro-1,2,2-trifluoroethane	76-13-1
Vinyl chloride	75-01-4

TABLE 1.—VOLATILE CONTAMINANTS [1]—Continued

Compound	CAS no.
Xylene	1330-20-7

[1] When testing for any or all of these contaminants, the zero-headspace extractor vessel shall be used instead of the bottle extractor.

2.3 If compatible (i.e., multiple phases will not form on combination), the initial liquid phase of the waste is added to the liquid extract, and these are analyzed together. If incompatible, the liquids are analyzed separately and the results are mathematically combined to yield a volume-weighted average concentration.

3.0 Interferences

3.1 Potential interferences that may be encountered during analysis are discussed in the individual analytical methods.

4.0 Apparatus and Materials

4.1 Agitation apparatus: The agitation apparatus must be capable of rotating the extraction vessel in an end-over-end fashion (see Figure 2) at 30 +2 rpm. Suitable devices known to EPA are identified in Table 2.

4.2 Extraction Vessel:

4.2.1 Zero-Headspace Extraction Vessel (ZHE). This device is for use only when the waste is being tested for the mobility of volatile constituents (i.e., those listed in Table 1). The ZHE (depicted in Figure 3) allows for liquid/solid separation within the device, and effectively precludes headspace. This type of vessel allows for initial liquid/solid separation, extraction, and final extract filtration without opening the vessel (see step 4.3.1). The vessels shall have an internal volume of 500–600 mL and be equipped to accommodate a 90–110 mm filter. The devices contain VITON [R] [1] O-rings which should be replaced frequently. Suitable ZHE devices known to EPA are identified in Table 3.

BILLING CODE 6560-50-M

[1] VITON [R] is a trademark of Du Pont.

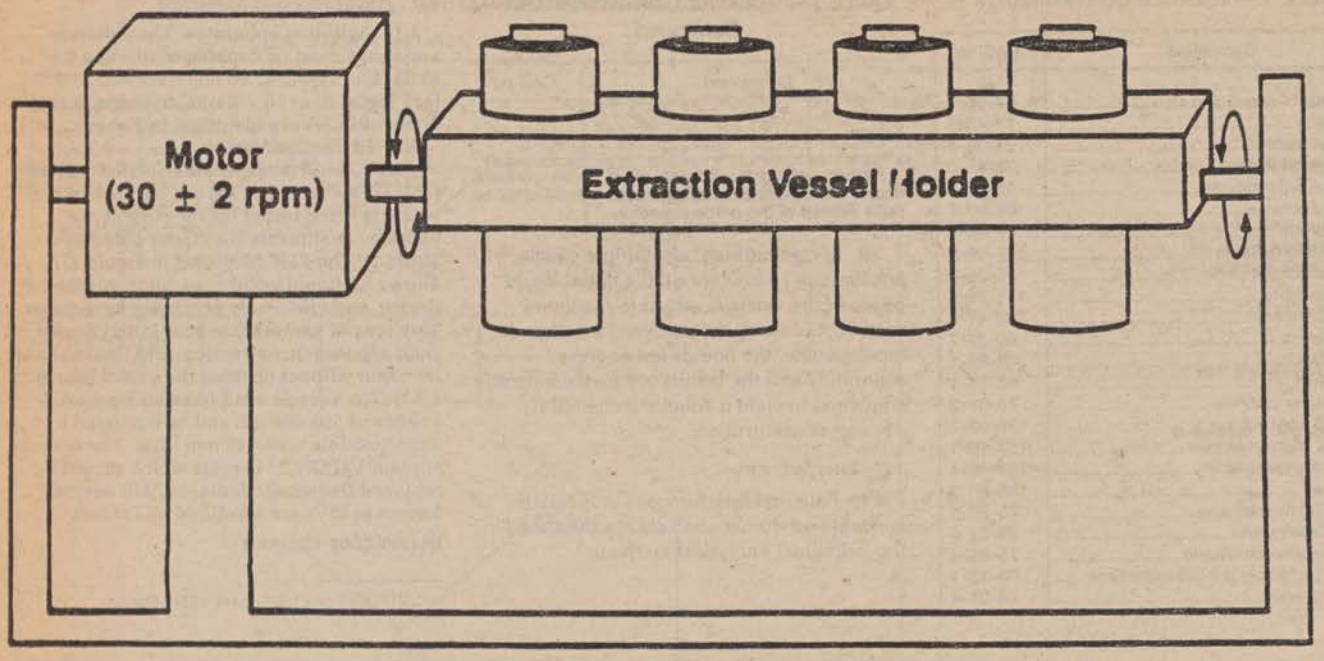

Figure 2. Rotary Agitation Apparatus

BILLING CODE 6560-50-C

TABLE 2.—SUITABLE ROTARY AGITATION APPARATUS [1]

Company	Location	Model no.
Analytical Testing and Consulting Services, Inc	Warrington, PA (215) 343-4490	2-ZHE or 4-bottle extractor (DC20S); 4-ZHE or 8-bottle extractor (DC20); 6-ZHE or 12-bottle extractor (DC20B).
Associated Design and Manufacturing Company	Alexandria, VA (703) 549-5999	2-vessel (3740-2). 4-vessel (3740-4). 6-vessel (3740-6). 8-vessel (3740-8). 12-vessel (3740-12). 24-vessel (3740-24).
Environmental Machine and Design, Inc	Lynchburg, VA (804) 845-6424	8-vessel (08-00-00). 4-vessel (04-00-00).
IRA Machine Shop and Laboratory	Santurce, PR (809) 752-4004	8-vessel (011001).
Lars Lande Manufacturing	Whitmore Lake, MI (313) 449-4116.	10-vessel (10VRE). 5-vessel (5 VRE).
Millipore Corp	Bedford, MA (800) 225-3384	4-ZHE or 4 1-liter bottle extractor (YT30ORAHW).

[1] Any device that rotates the extraction vessel in an end-over-end fashion at 30 +2 rpm is acceptable.

BILLING CODE 6560-50-M

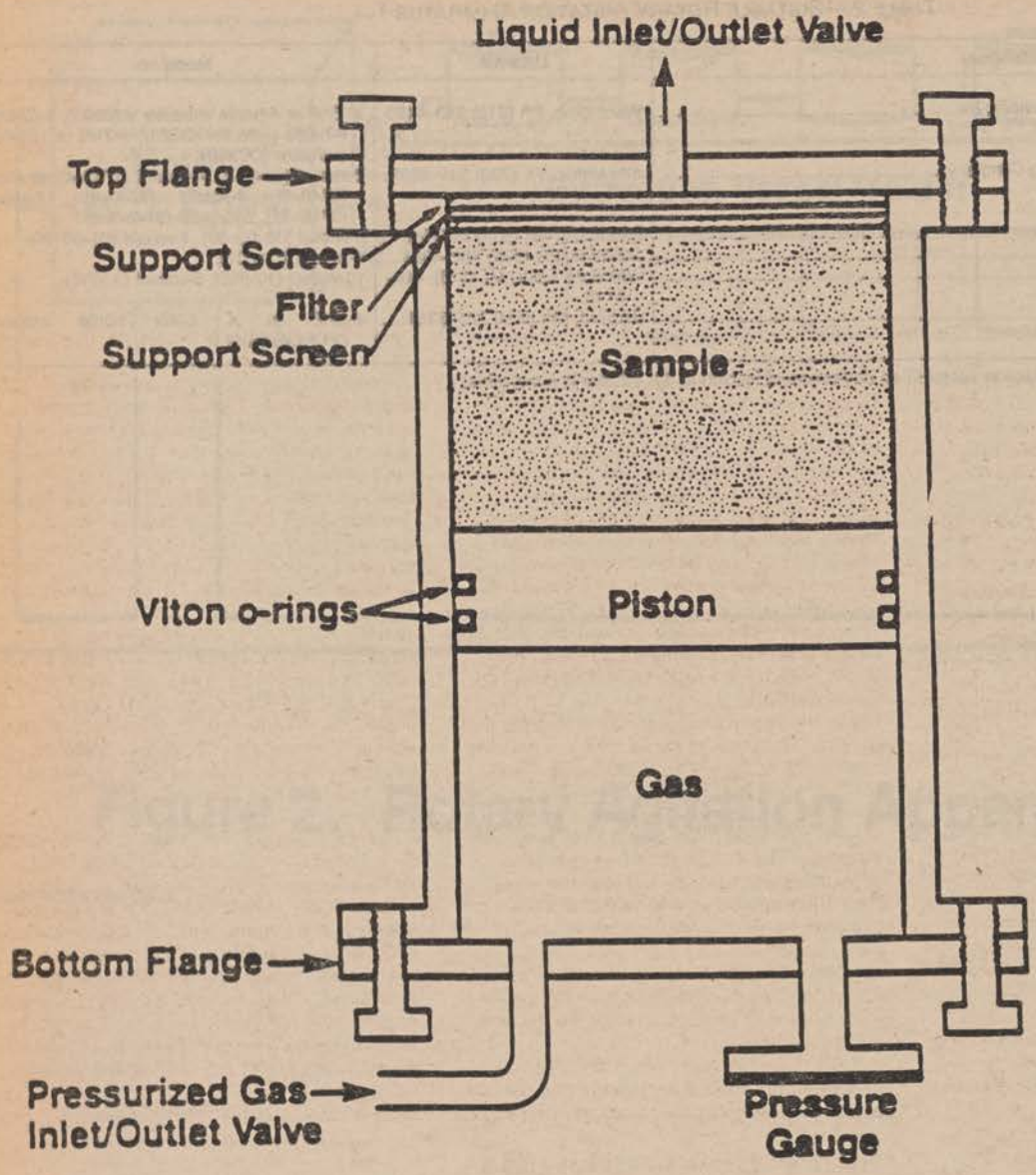

Figure 3. Zero-Headspace Extractor (ZHE)

BILLING CODE 6560-50-C

TABLE 3.—SUITABLE ZERO-HEADSPACE EXTRACTOR VESSELS [1]

Company	Location	Model no.
Analytical Testing & Consulting Services, Inc	Warrington, PA (215) 343-4490	C102, Mechanical Pressure Device.
Associated Design and Manufacturing Company	Alexandria, VA (703) 549-5999	3745-ZHE, Gas Pressure Device.
Lars Lande Manufacturing [2]	Whitmore Lake, MI (313) 449-4116.	ZHE-11, Gas Pressure Device.
Millipore Corporation	Bedford, MA (800) 225-3384	YT3009OHW, Gas Pressure Device.
Environmental Machine and Design, Inc	Lynchburg, VA (804) 845-6424	VOLA-TOX1, Gas Gas Pressure Device.

[1] Any device that meets the specifications listed in Section 4.2.1 of the method is suitable.
[2] This device uses a 110 mm filter.

For the ZHE to be acceptable for use, the piston within the ZHE should be able to be moved with approximately 15 psi or less. If it takes more pressure to move the piston, the O-rings in the device should be replaced. If this does not solve the problem, the ZHE is unacceptable for TCLP analyses and the manufacturer should be contacted.

The ZHE should be checked for leaks after every extraction. If the device contains a built-in pressure gauge, pressurize the device to 50 psi, allow it to stand unattended for 1 hour, and recheck the pressure. If the device does not have a built-in pressure gauge, pressurize the device to 50 psi, submerge it in water, and check for the presence of air bubbles escaping from any of the fittings. If pressure is lost, check all fittings and inspect and replace O-rings, if necessary. Retest the device. If leakage problems cannot be solved, the manufacturer should be contacted.

Some ZHEs use gas pressure to actuate the ZHE piston, while others use mechanical pressure (see Table 3). Whereas the volatiles procedure (see section 9.0) refers to pounds-per-square-inch (psi), for the mechanically actuated piston, the pressure applied is measured in torque-inch-pounds. Refer to the manufacturer's instructions as to the proper conversion.

4.2.2 Bottle Extraction Vessel. When the waste is being evaluated using the nonvolatile extraction, a jar with sufficient capacity to hold the sample and the extraction fluid is needed. Headspace is allowed in this vessel.

The extraction bottles may be constructed from various materials, depending on the contaminants to be analyzed and the nature of the waste (see Step 4.3.3). It is recommended that borosilicate glass bottles be used instead of other types of glass, especially when inorganics are of concern. Plastic bottles, other than polytetrafluoroethylene, shall not be used if organics are to be investigated. Bottles are available from a number of laboratory suppliers. When this type of extraction vessel is used, the filtration device discussed in Step 4.3.2 is used for initial liquid/solid separation and final extract filtration.

4.3 Filtration Devices: It is recommended that all filtrations be performed in a hood.

4.3.1 Zero-Headspace Extractor Vessel (ZHE): When the waste is evaluated for volatiles, the zero-headspace extraction vessel described in section 4.2.1 is used for filtration. The device shall be capable of supporting and keeping in place the glass fiber filter and be able to withstand the pressure needed to accomplish separation (50 psi).

Note: When it is suspected that the glass fiber filter has been ruptured, an in-line glass fiber filter may be used to filter the material within the ZHE.

4.3.2 Filter Holder: When the waste is evaluated for other than volatile compounds, any filter holder capable of supporting a glass fiber filter and able to withstand the pressure needed to accomplish separation may be used. Suitable filter holders range from simple vacuum units to relatively complex systems capable of exerting pressures of up to 50 psi or more. The type of filter holder used depends on the properties of the material to be filtered (see Step 4.3.3). These devices shall have a minimum internal volume of 300 mL and be equipped to accommodate a minimum filter size of 47 mm (filter holders having an internal capacity of 1.5 L or greater and equipped to accommodate a 142 mm diameter filter are recommended). Vacuum filtration can only be used for wastes with low solids content (<10 percent) and for highly granular liquid-containing wastes. All other types of wastes should be filtered using positive pressure filtration. Suitable filter holders known to EPA are shown in Table 4.

4.3.3 Materials of Construction: Extraction vessels and filtration devices shall be made of inert materials which will not leach or absorb waste components. Glass, polytetrafluoroethylene (PTFE), or type 316 stainless steel equipment may be used when evaluating the mobility of both organic and inorganic components. Devices made of high-density polyethylene (HDPE), polypropylene, or polyvinyl chloride may be used only when evaluating the mobility of metals. Borosilicate glass bottles are recommended for use over other types of glass bottles, especially when inorganics are constituents of concern.

TABLE 4.—SUITABLE FILTER HOLDERS [1]

Company	Location	Model/Catalogue no.	Size (um)
Nucleopore Corporation	Pleasanton, CA (800) 882-7711	425910 410400	142 mm 47 mm
Micro Filtration Systems	Dublin, CA (800) 334-7132 (415) 828-6010	302400 311400	142 mm 47 mm
Millipore Corporation	Bedford, MA (800) 225-3384	YT30142HW XX1004700	142 mm 47 mm

[1] Any device capable of separating the liquid from the solid phase of the waste is suitable, providing that it is chemically compatible with the waste and the constituents to be analyzed. Plastic devices (not listed above) may be used when only inorganic contaminants are of concern. The 142 mm size filter holder is recommended.

4.4 Filters: Filters shall be made of borosilicate glass fiber, shall contain no binder materials, and shall have an effective pore size of 0.6 to 0.8-um or equivalent. Filters known to EPA which meet these specifications are identified in Table 5. Pre-filters must not be used. When evaluating the mobility of metals, filters shall be acid-washed prior to use by rinsing with 1N nitric acid followed by three consecutive rinses with deionized distilled water (a minimum of 1-L per rinse is recommended). Glass fiber filters are fragile and should be handled with care.

4.5 pH meters: The meter should be accurate to +0.05 units at 25 °C.

TABLE 5.—SUITABLE FILTER MEDIA [1]

Company	Location	Model	Pore size
Millipore Corporation	Bedford, MA (800) 225-3384	AP40	0.7
Nucleopore Corporation	Pleasanton, CA (415) 463-2530	211625	0.7
Whatman Laboratory Products, Inc	Clifton, NJ (201) 773-5800	GFF	0.7
Micro Filtration Systems	Dublin, CA (800) 334-7132 (415) 828-6010	GF75	0.7

[1] Any filter that meets the specifications in Section 4.4 of the Method is suitable.

4.6 ZHE extract collection devices: TEDLAR®[2] bags or glass, stainless steel or PTFE gas-tight syringes are used to collect the initial liquid phase and the final extract of the waste when using the ZHE device. The devices listed are recommended for use under the following conditions:

4.6.1 If a waste contains an aqueous liquid phase or if a waste does not contain a significant amount of nonaqueous liquid (i.e., <1 percent of total waste), the TEDLAR® bag or a 600 mL syringe should be used to collect and combine the initial liquid and solid extract.

4.6.2 If a waste contains a significant amount of nonaqueous liquid in the initial liquid phase (i.e., >1 percent of total waste), the syringe or the TEDLAR® bag may be used for both the initial solid/liquid separation and the final extract filtration. However, analysts should use one or the other, not both.

4.6.3 If the waste contains no initial liquid phase (is 100 percent solid) or has no significant solid phase (is 100 percent liquid), either the TEDLAR® bag or the syringe may be used. If the syringe is used, discard the first 5 mL of liquid expressed from the device. The remaining aliquots are used for analysis.

4.7 ZHE extraction fluid transfer devices: Any device capable of transferring the extraction fluid into the ZHE without changing the nature of the extraction fluid is acceptable (e.g., a positive displacement or peristaltic pump, a gas tight syringe, pressure filtration unit (See Step 4.3.2), or other ZHE device).

4.8 Laboratory balance: Any laboratory balance accurate to within +0.01 grams may be used (all weight measurements are to be within +0.1 grams).

5.0 Reagents

5.1 Reagent water. Reagent water is defined as water in which an interferant is not observed at or above the methods detection limit of the analyte(s) of interest. For nonvolatile extractions, ASTM Type II water or equivalent meets the definition of reagent water. For volatile extractions, it is recommended that reagent water be generated by any of the following methods. Reagent water should be monitored periodically for impurities.

5.1.1 Reagent water for volatile extractions may be generated by passing tap water through a carbon filter bed containing about 500 grams of activated carbon (Calgon Corp., Filtrasorb-300 or equivalent).

5.1.2 A water purification system (Millipore Super-Q or equivalent) may also be used to generate reagent water for volatile extractions.

5.1.3 Reagent water for volatile extractions may also be prepared by boiling water for 15 minutes. Subsequently, while maintaining the water temperature at 90 +5 °C, bubble a contaminant-free inert gas (e.g., nitrogen) through the water for 1 hour. While still hot, transfer the water to a narrow mouth screw-cap bottle under zero-headspace and seal with a Teflon-lined septum and cap.

5.2 Hydrochloric acid (1N), HCl, made from ACS reagent grade.

5.3 Nitric acid (1N), HNO_3, made from ACS reagent grade.

5.4 Sodium hydroxide (1N), NaOH, made from ACS reagent grade.

5.5 Glacial acetic acid, HOAc, ACS reagent grade.

5.6 Extraction fluid.

5.6.1 Extraction fluid #1: Add 5.7 mL glacial HOAc to 500 mL of the appropriate water (See Step 5.1), add 64.3 mL of 1N NaOH, and dilute to a volume of 1 liter. When correctly prepared, the pH of this fluid will be 4.93 +0.05.

5.6.2 Extraction fluid #2: Dilute 5.7 mL glacial HOAc with ASTM Type II water (See Step 5.1) to a volume of 1 liter. When correctly prepared, the pH of this fluid will be 2.88+0.05.

Note: These extraction fluids should be monitored frequently for impurities. The pH should be checked prior to use to ensure that these fluids are made up accurately. If impurities are found or the pH is not within the above specifications, the fluid shall be discarded and fresh extraction fluid prepared.

5.7 Analytical standards prepared according to the appropriate analytical method.

6.0 Sample Collection, Preservation, and Handling

6.1 All samples shall be collected using an appropriate sampling plan.

6.2 The TCLP may place requirements on the minimal size of the field sample depending upon the physical state or states of the waste and the contaminants of concern. An aliquot is needed for preliminary evaluation of which extraction fluid is to be used for the nonvolatile contaminant extraction procedure. Another aliquot may be needed to actually conduct the nonvolatile extraction (see section 1.4 concerning the use of this extract for volatile organics). If volatile organics are of concern, another aliquot may be needed. Quality control measures may require additional aliquots. Further, it is always wise to collect more sample just in case something goes wrong with the initial attempt to conduct the test.

6.3 Preservatives shall not be added to samples.

6.4 Samples may be refrigerated unless refrigeration results in irreversible physical change to the waste. If precipitation occurs, the entire sample (including precipitate) should be extracted.

6.5 When the waste is to be evaluated for volatile contaminants, care shall be taken to minimize the loss of volatiles. Samples shall be taken and stored in a manner to prevent the loss of volatile contaminants (e.g., samples should be collected in Teflon-lined septum capped vials and stored at 4 °C, until ready to be opened prior to extraction).

6.6 TCLP extracts should be prepared for analysis and analyzed as soon as possible following extraction. Extracts or portions of extracts for metallic contaminant determinations must be acidified with nitric acid to a pH <2, unless precipitation occurs (see section 8.14 if precipitation occurs). Extracts or portions of extracts for organic contaminant determinations shall not be allowed to come into contact with the atmosphere (i.e., no headspace) to prevent losses. See section 10.0 (QA requirements) for acceptable sample and extract holding times.

7.0 Preliminary Evaluations

Perform preliminary TCLP evaluations on a minimum 100 gram aliqout of waste. This aliquot may not actually undergo TCLP extraction. These preliminary evaluations include: (1) determination of the percent solids; (2) determination of whether the waste contains insignificant solids and is, therefore, its own extract after filtration; (3) determination of whether the solid portion of the waste requires particle size reduction; and (4) determination of which of the two extraction fluids are to be used for the nonvolatile TCLP extraction of the waste.

7.1 Preliminary determination of percent solids: Percent solids is defined as that fraction of a waste sample (as a percentage of the total sample) from which no liquid may be forced out by an applied pressure, as described below.

7.1.1 If the waste will obviously yield no free liquid when subjected to pressure filtration (i.e., is 100% solids) proceed to Step 7.3.

7.1.2 If the sample is liquid or multiphasic, liquid/solid separation to make a preliminary determination of percent solids is required. This involves the filtration device described in Step 4.3.2 and is outlined in Steps 7.1.3 through 7.1.9.

7.1.3 Pre-weigh the filter and the container that will receive the filtrate.

7.1.4 Assemble the filter holder and filter following the manufacturer's instructions. Place the filter on the support screen and secure.

[2] TEDLAR® is a registered trademark of Du Pont.

7.1.5 Weigh out a subsample of the waste (100 gram minimum) and record the weight.

7.1.6 Allow slurries to stand to permit the solid phase to settle. Wastes that settle slowly may be centrifuged prior to filtration. Centrifugation is to be used only as an aid to filtration. If used, the liquid should be decanted and filtered followed by filtration of the solid portion of the waste through the same filtration system.

7.1.7 Quantitatively transfer the waste sample to the filter holder (liquid and solid phases). Spread the waste sample evenly over the surface of the filter. If filtration of the waste at 4 °C reduces the amount of expressed liquid over what would be expressed at room temperature then allow the sample to warm up to room temperature in the device before filtering.

Note: If waste material (>1 percent of original sample weight) has obviously adhered to the container used to transfer the sample to the filtration apparatus, determine the weight of this residue and subtract it from the sample weight determined in Step 7.1.5 to determine the weight of the waste sample that will be filtered.

Gradually apply vacuum or gentle pressure of 1–10 psi, until air or pressurizing gas moves through the filter. If this point is not reached under 10 psi, and if no additional liquid has passed through the filter in any 2-minute interval, slowly increase the pressure in 10-psi increments to a maximum of 50 psi. After each incremental increase of 10-psi, if the pressurizing gas has not moved through the filter, and if no additional liquid has passed through the filter in any 2-minute interval, proceed to the next 10-psi increment. When the pressurizing gas begins to move through the filter, or when liquid flow has ceased at 50 psi (i.e., filtration does not result in any additional filtrate within any 2-minute period), stop the filtration.

Note: Instantaneous application of high pressure can degrade the glass fiber filter and may cause premature plugging.

7.1.8 The material in the filter holder is defined as the solid phase of the waste, and the filtrate is defined as the liquid phase.

Note: Some wastes, such as oily wastes and some paint wastes, will obviously contain some material that appears to be a liquid. Even after applying vacuum or pressure filtration, as outlined in Step 7.1.7, this material may not filter. If this is the case, the material within the filtration device is defined as a solid. Do not replace the original filter with a fresh filter under any circumstances. Use only one filter.

7.1.9 Determine the weight of the liquid phase by subtracting the weight of the filtrate container (see Step 7.1.3) from the total weight of the filtrate-filled container. Determine the weight of the solid phase of the waste sample by subtracting the weight of the liquid phase from the weight of the total waste sample, as determined in Step 7.1.5 or 7.1.7.

Record the weight of the liquid and solid phases. Calculate the percent solids as follows:

$$\text{Percent solids} = \frac{\text{Weight of solid (Step 7.1.9)}}{\text{Total weight of waste (Step 7.1.5 or 7.1.7)}} \times 100$$

7.2 If the percent solids determined in Step 7.1.9 is equal to or greater than 0.5%, then proceed either to Step 7.3 to determine whether the solid material requires particle size reduction or to Step 7.2.1 if it is noticed that a small amount of the filtrate is entrained in wetting of the filter. If the percent solids determined in Step 7.1.9 is less than 0.5%, then proceed to Step 8.9 if the nonvolatile TCLP is to be performed and to section 9.0 with a fresh portion of the waste if the volatile TCLP is to be performed.

7.2.1 Remove the solid phase and filter from the filtration apparatus.

7.2.2 Dry the filter and solid phase at 100 +20 °C until two successive weighing yield the same value within +1 percent. Record the final weight.

Note: Caution should be taken to ensure that the subject solid will not flash upon heating. It is recommended that the drying oven be vented to a hood or other appropriate device.

7.2.3 Calculate the percent dry solids as follows:

$$\text{Percent dry solids} = \frac{\text{(Weight of dry waste + filter)} - \text{tared weight of filter}}{\text{Initial weight of waste (Step 7.1.5 or 7.1.7)}} \times 100$$

7.2.4 If the percent dry solids is less than 0.5 percent, then proceed to Step 8.9 if the nonvolatile TCLP is to be performed, and to Section 9.0 if the volatile TCLP is to be performed. If the percent dry solids is greater than or equal to 0.5%, and if the nonvolatile TCLP is to be performed, return to the beginning of this Section (7.0) and, with a fresh portion of waste, determine whether particle size reduction is necessary (Step 7.3) and determine the appropriate extraction fluid (Step 7.4). If only the volatile TCLP is to be performed, see the note in Step 7.4.

7.3 Determination of whether the waste requires particle-size reduction (particle-size is reduced during this step): Using the solid portion of the waste, evaluate the solid for particle size. Particle-size reduction is required, unless the solid has a surface area per gram of material equal to or greater than 3.1 cm^2, or is smaller than 1 cm in its narrowest dimension (i.e., is capable of passing through a 9.5 mm (0.375 inch) standard sieve). If the surface area is smaller or the particle size larger than described above, prepare the solid portion of the waste for extraction by crushing, cutting, or grinding the waste to a surface area or particle-size as described above. If the solids are prepared for organic volatiles extraction, special precautions must be taken, see Step 9.6.

Note: Surface area criteria are meant for filamentous (e.g., paper, cloth, and similar) waste materials. Actual measurement of surface area is not required, nor is it recommended. For materials that do not obviously meet the criteria, sample-specific methods would need to be developed and employed to measure the surface area. Such methodology is currently not available.

7.4 Determination of appropriate extraction fluid: If the solid content of the waste is greater than or equal to 0.5 percent and if TCLP extraction for nonvolatile constituents will take place (Section 8.0), perform the determination of the appropriate fluid (Step 5.6) to use for the nonvolatiles extraction as follows:

Note: TCLP extraction for volatile constituents uses only extraction fluid #1 (Step 5.6.1). Therefore, if TCLP extraction for nonvolatiles is not required, proceed to Section 9.0.

7.4.1 Weigh out a small subsample of the solid phase of the waste, reduce the solid (if necessary) to a particle-size of approximately 1 mm in diameter or less, and transfer 5.0 grams of the solid phase of the waste to a 500-mL beaker or Erlenmeyer flask.

7.4.2 Add 96.5 mL of reagent water (ASTM Type II) to the beaker, cover with a watchglass, and stir vigorously for 5 minutes using a magnetic stirrer. Measure and record the pH. If the pH is <5.0, use extraction fluid #1. Proceed to Section 8.0.

7.4.3 If the pH from Step 7.4.2 is >5.0, add 3.5 mL 1N HCl, slurry briefly, cover with a watchglass, heat to 50 °C, and hold at 50 °C for 10 minutes.

7.4.4 Let the solution cool to room temperature and record the pH. If the pH is <5.0, use extraction fluid #1. If the pH is >5.0, use extraction fluid #2. Proceed to Section 8.0.

7.5 If the aliquot of the waste used for the preliminary evaluation (Steps 7.1–7.4) was determined to be 100% solid at Step 7.1.1, then it can be used for the Section 8.0 extraction (assuming at least 100 grams

remain), and the section 9.0 extraction (assuming at least 25 grams remain). If the aliquot was subjected to the procedure in Step 7.1.7, then another aliquot shall be used for the volatile extraction procedure in Section 9.0. The aliquot of the waste subjected to the procedure in Step 7.1.7 might be appropriate for use for the section 8.0 extraction if an adequate amount of solid (as determined by Step 7.1.9) was obtained. The amount of solid necessary is dependent upon whether a sufficient amount of extract will be produced to support the analyses. If an adequate amount of solid remains, proceed to Step 8.10 of the nonvolatile TCLP extraction.

8.0 Procedure When Volatiles Are Not Involved

A minimum sample size of 100 grams (solid and liquid phases) is required. In some cases, a larger sample size may be appropriate, depending on the solids content of the waste sample (percent solids, See Step 7.1), whether the initial liquid phase of the waste will be miscible with the aqueous extract of the solid, and whether inorganics, semivolatile organics, pesticides, and herbicides are all analytes of concern. Enough solids should be generated for extraction such that the volume of TCLP extract will be sufficient to support all of the analyses required. If the amount of extract generated by a single TCLP extraction will not be sufficient to perform all of the analyses, more than one extraction may be performed and the extracts from each combined and aliquoted for analysis.

8.1 If the waste will obviously yield no liquid when subjected to pressure filtration (i.e., is 100 percent solid, see Step 7.1), weigh out a subsample of the waste (100 gram minimum) and proceed to Step 8.9.

8.2 If the sample is liquid or multiphasic, liquid/solid separation is required. This involves the filtration device described in Step 4.3.2 and is outlined in Steps 8.3 to 8.8.

8.3 Pre-weigh the container that will receive the filtrate.

8.4 Assemble the filter holder and filter following the manufacturer's instructions. Place the filter on the support screen and secure. Acid wash the filter if evaluating the mobility of metals (see Step 4.4).

Note: Acid washed filters may be used for all nonvolatile extractions even when metals are not of concern.

8.5 Weigh out a subsample of the waste (100 gram minimum) and record the weight. If the waste contains <0.5 percent dry solids (Step 7.2), the liquid portion of the waste, after filtration, is defined as the TCLP extract. Therefore, enough of the sample should be filtered so that the amount of filtered liquid will support all of the analyses required of the TCLP extract. For wastes containing >0.5 percent dry solids (Step 7.1 or 7.2), use the percent solids information obtained in Step 7.1 to determine the optimum sample size (100 gram minimum) for filtration. Enough solids should be generated by filtration to support the analyses to be performed on the TCLP extract.

8.6 Allow slurries to stand to permit the solid phase to settle. Wastes that settle slowly may be centrifuged prior to filtration. Use centrifugation only as an aid to filtration. If the waste is centrifuged, the liquid should be decanted and filtered followed by filtration of the solid portion of the waste through the same filtration system.

8.7 Quantitatively transfer the waste sample (liquid and solid phases) to the filter holder (see Step 4.3.2). Spread the waste sample evenly over the surface of the filter. If filtration of the waste at 4 °C reduces the amount of expressed liquid over what would be expressed at room temperature, then allow the sample to warm up to room temperature in the device before filtering.

Note: If waste material (>1 percent of the original sample weight) has obviously adhered to the container used to transfer the sample to the filtration apparatus, determine the weight of this residue and subtract it from the sample weight determined in Step 8.5, to determine the weight of the waste sample that will be filtered.

Gradually apply vacuum or gentle pressure of 1–10 psi, until air or pressurizing gas moves through the filter. If this point is not reached under 10 psi, and if no additional liquid has passed through the filter in any 2-minute interval, slowly increase the pressure in 10-psi increments to a maximum of 50 psi. After each incremental increase of 10 psi, if the pressurizing gas has not moved through the filter, and if no additional liquid has passed through the filter in any 2-minute interval, proceed to the next 10-psi increment. When the pressurizing gas begins to move through the filter, or when the liquid flow has ceased at 50 psi (i.e., filtration does not result in any additional filtrate within a 2-minute period), stop the filtration.

Note: Instantaneous application of high pressure can degrade the glass fiber filter and may cause premature plugging.

8.8 The material in the filter holder is defined as the solid phase of the waste, and the filtrate is defined as the liquid phase. Weigh the filtrate. The liquid phase may now be either analyzed (See Step 8.12) or stored at 4 °C until time of analysis.

Note: Some wastes, such as oily wastes and some paint wastes, will obviously contain some material that appears to be a liquid. Even after applying vacuum or pressure filtration, as outlined in Step 8.7, this material may not filter. If this is the case, the material within the filtration device is defined as a solid and is carried through the extraction as a solid. Do not replace the original filter with a fresh filter under any circumstances. Use only one filter.

8.9 If the waste contains <0.5 percent dry solids (see Step 7.2), proceed to Step 8.13. If the waste contains >0.5 percent dry solids (see Step 7.1 or 7.2), and if particle-size reduction of the solid was needed in Step 7.3, proceed to Step 8.10. If the waste as received passes a 9.5 mm sieve, quantitatively transfer the solid material into the extractor bottle along with the filter used to separate the initial liquid from the solid phase, and proceed to Step 8.11.

8.10 Prepare the solid portion of the waste for extraction by crushing, cutting, or grinding the waste to a surface area or particle-size as described in Step 7.3. When the surface area or particle-size has been appropriately altered, quantitatively transfer the solid material into an extractor bottle. Include the filter used to separate the initial liquid from the solid phase.

Note: Sieving of the waste is not normally required. Surface area requirements are meant for filamentous (e.g., paper, cloth) and similar waste materials. Actual measurement of surface area is not recommended. If sieving is necessary, a Teflon-coated sieve should be used to avoid contamination of the sample.

8.11 Determine the amount of extraction fluid to add to the extractor vessel as follows:

$$\text{Weight of extraction fluid} = \frac{20 \times \text{percent solids (Step 7.1)} \times \text{weight of waste filtered (Step 8.5 or 8.7)}}{100}$$

Slowly add this amount of appropriate extraction fluid (see Step 7.4) to the extractor vessel. Close the extractor bottle tightly (it is recommended that Teflon tape be used to ensure a tight seal), secure in rotary agitation device, and rotate at 30+2 rpm for 18+2 hours. Ambient temperature (i.e., temperature of room in which extraction takes place) shall be maintained at 22 +3 °C during the extraction period.

Note: As agitation continues, pressure may build up within the extractor bottle for some types of wastes (e.g., limed or calcium carbonate containing waste may evolve gases such as carbon dioxide). To relieve excess pressure, the extractor bottle may be periodically opened (e.g., after 15 minutes, 30 minutes, and 1 hour) and vented into a hood.

8.12 Following the 18+2 hour extraction, separate the material in the extractor vessel into its component liquid and solid phases by filtering through a new glass fiber filter, as outlined in Step 8.7. For final filtration of the TCLP extract, the glass fiber filter may be changed, if necessary, to facilitate filtration. Filter(s) shall be acid-washed (see Step 4.4) if evaluating the mobility of metals.

8.13 Prepare the TCLP extract as follows:

8.13.1 If the waste contained no initial liquid phase, the filtered liquid material obtained from Step 8.12 is defined as the TCLP extract. Proceed to Step 8.14.

8.13.2 If compatible (e.g., multiple phases will not result on combination), combine the filtered liquid resulting from Step 8.12 with the initial liquid phase of the waste obtained in Step 8.7. This combined liquid is defined as the TCLP extract. Proceed to Step 8.14.

8.13.3 If the initial liquid phase of the waste, as obtained from Step 8.7, is not or may not be compatible with the filtered liquid resulting from Step 8.12, do not combine these liquids. Analyze these liquids, collectively defined as the TCLP extract, and combine the results mathematically, as described in Step 8.14.

8.14 Following collection of the TCLP extract, the pH of the extract should be recorded. Immediately aliquot and preserve the extract for analysis. Metals aliquots must be acidified with nitric acid to pH<2. If precipitation is observed upon addition of nitric acid to a small aliquot of the extract, then the remaining portion of the extract for metals analyses shall not be acidified and the extract shall be analyzed as soon as possible. All other aliquots must be stored under refrigeration (4 °C) until analyzed. The TCLP extract shall be prepared and analyzed according to appropriate analytical methods. TCLP extracts to be analyzed for metals shall be acid digested except in those instances where digestion causes loss of metallic contaminants. If an analysis of the undigested extract shows that the concentration of any regulated metallic contaminant exceeds the regulatory level, then the waste is hazardous and digestion of the extract is not necessary. However, data on undigested extracts alone cannot be used to demonstrate that the waste is not hazardous. If the individual phases are to be analyzed separately, determine the volume of the individual phases (to +0.5 percent), conduct the appropriate analyses, and combine the results mathematically by using a simple volume-weighted average:

$$\text{Final analyte concentration} = \frac{(V_1)(C_1)+(V_2)(C_2)}{V_1+V_2}$$

where:

V_1 = The volume of the first phase (L).

C_1 = The concentration of the contaminant of concern in the first phase (mg/L).

V_2 = The volume of the second phase (L).

C_2 = The concentration of the contaminant of concern in the second phase (mg/L).

8.15 Compare the contaminant concentrations in the TCLP extract with the thresholds identified in the appropriate regulations. Refer to § 10.0 for quality assurance requirements.

9.0 Procedure When Volatiles Are Involved

Use the ZHE device to obtain TCLP extract for analysis of volatile compounds only. Extract resulting from the use of the ZHE shall not be used to evaluate the mobility of nonvolatile analytes (e.g., metals, pesticides, etc.).

The ZHE device has approximately a 500-mL internal capacity. The ZHE can thus accommodate a maximum of 25 grams of solid (defined as that fraction of a sample from which no additional liquid may be forced out by an applied pressure of 50 psi), due to the need to add an amount of extraction fluid equal to 20 times the weight of the solid phase.

Charge the ZHE with sample only once and do not open the device until the final extract (of the solid) has been collected. Repeated filling of the ZHE to obtain 25 grams of solid is not permitted.

Do not allow the waste, the initial liquid phase, or the extract to be exposed to the atmosphere for any more time than is absolutely necessary. Any manipulation of these materials should be done when cold (4 °C) to minimize loss of volatiles.

9.1 Pre-weigh the (evacuated) filtrate collection container (See Step 4.6) and set aside. If using a TEDLAR® bag, express all liquid from the ZHE device into the bag, whether for the initial or final liquid/solid separation, and take an aliquot from the liquid in the bag for analysis. The containers listed in Step 4.6 are recommended for use under the conditions stated in 4.6.1–4.6.3.

9.2 Place the ZHE piston within the body of the ZHE (it may be helpful first to moisten the piston O-rings slightly with extraction fluid). Adjust the piston within the ZHE body to a height that will minimize the distance the piston will have to move once the ZHE is charged with sample (based upon sample size requirements determined from Section 9.0, Step 7.1 and/or 7.2). Secure the gas inlet/outlet flange (bottom flange) onto the ZHE body in accordance with the manufacturer's instructions. Secure the glass fiber filter between the support screens and set aside. Set liquid inlet/outlet flange (top flange) aside.

9.3 If the waste is 100 percent solid (see Step 7.1), weigh out a subsample (25 gram maximum) of the waste, record weight, and proceed to Step 9.5.

9.4 If the waste contains <0.5 percent dry solids (Step 7.2), the liquid portion of waste, after filtration, is defined as the TCLP extract. Filter enough of the sample so that the amount of filtered liquid will support all of the volatile analyses required. For wastes containing >0.5 percent dry solids (Steps 7.1 and/or 7.2), use the percent solids information obtained in Step 7.1 to determine the optimum sample size to charge into the ZHE. The recommended sample size is as follows:

9.4.1 For wastes containing <0.5 percent solids (see Step 7.1), weigh out a 500-gram subsample of waste and record the weight.

9.4.2 For wastes containing >0.5 percent solids (see Step 7.1), determine the amount of waste to charge into the ZHE as follows:

$$\text{Weight of waste to change ZHE} = \frac{25}{\text{Percent solids (Step 7.1)}} \times 100$$

Weigh out a subsample of the waste of the appropriate size and record the weight.

9.5 If particle-size reduction of the solid portion of the waste was required in Step 7.3, proceed to Step 9.6. If particle-size reduction was not required in Step 7.3, proceed to Step 9.7.

9.6 Prepare the waste for extraction by crushing, cutting, or grinding the solid portion of the waste to a surface area or particle-size as described in Step 7.3.1. Wastes and appropriate reduction equipment should be refrigerated, if possible, to 4 °C prior to particle-size reduction. The means used to effect particle-size reduction must not generate heat in and of itself. If reduction of the solid phase of the waste is necessary, exposure of the waste to the atmosphere should be avoided to the extent possible.

Note: Sieving of the waste is not recommended due to the possibility that volatiles may be lost. The use of an appropriately graduated ruler is recommended as an acceptable alternative. Surface area requirements are meant for filamentous (e.g., paper, cloth) and similar waste materials. Actual measurement of surface area is not recommended.

When the surface area or particle-size has been appropriately altered, proceed to Step 9.7.

9.7 Waste slurries need not be allowed to stand to permit the solid phase to settle. Do not centrifuge wastes prior to filtration.

9.8 Quantitatively transfer the entire sample (liquid and solid phases) quickly to the ZHE. Secure the filter and support screens onto the top flange of the device and secure the top flange to the ZHE body in accordance with the manufacturer's instructions. Tighten all ZHE fittings and place the device in the vertical position (gas

inlet/outlet flange on the bottom). Do not attach the extract collection device to the top plate.

Note: If waste material (>1% of original sample weight) has obviously adhered to the container used to transfer the sample to the ZHE, determine the weight of this residue and subtract it from the sample weight determined in Step 9.4 to determine the weight of the waste sample that will be filtered.

Attach a gas line to the gas inlet/outlet valve (bottom flange) and, with the liquid inlet/outlet valve (top flange) open, begin applying gentle pressure of 1–10 psi (or more if necessary) to force all headspace slowly out of the ZHE device into a hood. At the first appearance of liquid from the liquid inlet/outlet valve, quickly close the valve and discontinue pressure. If filtration of the waste at 4 °C reduces the amount of expressed liquid over what would be expressed at room temperature, then allow the sample to warm up to room temperature in the device before filtering. If the waste is 100 percent solid (see Step 7.1), slowly increase the pressure to a maximum of 50 psi to force most of the headspace out of the device and proceed to Step 9.12.

9.9 Attach the evacuated pre-weighed filtrate collection container to the liquid inlet/outlet valve and open the valve. Begin applying gentle pressure of 1–10 psi to force the liquid phase of the sample into the filtrate collection container. If no additional liquid has passed through the filter in any 2-minute interval, slowly increase the pressure in 10-psi increments to a maximum of 50 psi. After each incremental increase of 10 psi, if no additional liquid has passed through the filter in any 2-minute interval, proceed to the next 10-psi increment. When liquid flow has ceased such that continued pressure filtration at 50 psi does not result in any additional filtrate within a 2-minute period, stop the filtration. Close the liquid inlet/outlet valve, discontinue pressure to the piston, and disconnect and weigh the filtrate collection container.

Note: Instantaneous application of high pressure can degrade the glass fiber filter and may cause premature plugging.

9.10 The material in the ZHE is defined as the solid phase of the waste and the filtrate is defined as the liquid phase.

Note: Some wastes, such as oily wastes and some paint wastes, will obviously contain some material that appears to be a liquid. Even after applying pressure filtration, this material will not filter. If this is the case, the material within the filtration device is defined as a solid and is carried through the TCLP extraction as a solid.

If the original waste contained <0.5 percent dry solids (see Step 7.2), this filtrate is defined as the TCLP extract and is analyzed directly. Proceed to Step 9.15.

9.11 The liquid phase may now be either analyzed immediately (See Steps 9.13 through 9.15) or stored at 4 °C under minimal headspace conditions until time of analysis. Determine the weight of extraction fluid #1 to add to the ZHE as follows:

$$\text{Weight of extraction fluid} = \frac{20 \times \text{percent solids (Step 7.1)} \times \text{weight of waste filtered (Step 9.4 or 9.8)}}{100}$$

9.12 The following steps detail how to add the appropriate amount of extraction fluid to the solid material within the ZHE and agitation of the ZHE vessel. Extraction fluid #1 is used in all cases (See Step 5.6).

9.12.1 With the ZHE in the vertical position, attach a line from the extraction fluid reservoir to the liquid inlet/outlet valve. The line used shall contain fresh extraction fluid and should be preflushed with fluid to eliminate any air pockets in the line. Release gas pressure on the ZHE piston (from the gas inlet/outlet valve), open the liquid inlet/outlet valve, and begin transferring extraction fluid (by pumping or similar means) into the ZHE. Continue pumping extraction fluid into the ZHE until the appropriate amount of fluid has been introduced into the device.

9.12.2 After the extraction fluid has been added, immediately close the liquid inlet/outlet valve and disconnect the extraction fluid line. Check the ZHE to ensure that all valves are in their closed positions. Manually rotate the device in an end-over-end fashion 2 or 3 times. Reposition the ZHE in the vertical position with the liquid inlet/outlet valve on top. Pressurize the ZHE to 5–10 psi (if necessary) and slowly open the liquid inlet/outlet valve to bleed out any headspace (into a hood) that may have been introduced due to the addition of extraction fluid. This bleeding shall be done quickly and shall be stopped at the first appearance of liquid from the valve. Re-pressurize the ZHE with 5–10 psi and check all ZHE fittings to ensure that they are closed.

9.12.3 Place the ZHE in the rotary agitation apparatus (if it is not already there) and rotate at 30+2 rpm for 18+2 hours. Ambient temperature (i.e., temperature of room in which extraction occurs) shall be maintained at 22+3 °C during agitation.

9.13 Following the 18 +2 hour agitation period, check the pressure behind the ZHE piston by quickly opening and closing the gas inlet/outlet valve and noting the escape of gas. If the pressure has not been maintained (i.e., no gas release observed), the device is leaking. Check the ZHE for leaking as specified in Step 4.2.1, and perform the extraction again with a new sample of waste. If the pressure within the device has been maintained, the material in the extractor vessel is once again separated into its component liquid and solid phases. If the waste contained an initial liquid phase, the liquid may be filtered directly into the same filtrate collection container (i.e., TEDLAR® bag) holding the initial liquid phase of the waste. A separate filtrate collection container must be used if combining would create multiple phases, or there is not enough volume left within the filtrate collection container. Filter through the glass fiber filter, using the ZHE device as discussed in Step 9.9. All extract shall be filtered and collected if the TEDLAR® bag is used, if the extract is multiphasic, or if the waste contained an initial liquid phase (see Steps 4.6 and 9.1).

Note: An in-line glass fiber filter may be used to filter the material within the ZHE if it is suspected that the glass fiber filter has been ruptured.

9.14 If the original waste contained no initial liquid phase, the filtered liquid material obtained from step 9.13 is defined as the TCLP extract. If the waste contained an initial liquid phase, the filtered liquid material obtained from Step 9.13 and the initial liquid phase (Step 9.9) are collectively defined as the TCLP extract.

9.15 Following collection of the TCLP extract, immediately prepare the extract for analysis and store with minimal headspace at 4 °C until analyzed. Analyze the TCLP extract according to the appropriate analytical methods. If the individual phases are to be analyzed separately (i.e., are not miscible), determine the volume of the individual phases (to 0.5%), conduct the appropriate analyses, and combine the results mathematically by using a simple volume-weighted average:

$$\text{Final analyte concentration} \frac{(V_1)(C_1)+(V_2)(C_2)}{V_1+V_2}$$

where:
V_1 = The volume of the first phases (l).
C_1 = The concentration of the contaminant of concern in the first phase (mg/l).
V_2 = The volume of the second phase (l).
C_2 = The concentration of the contaminant of concern in the second phase (mg/l).

9.16 Compare the contaminant concentrations in the TCLP extract with the thresholds identified in the appropriate regulations. Refer to section 10.0 for quality assurance requirements.

10.0 Quality Assurance Requirements

10.1 Maintain all data, including quality assurance data, and keep it available for reference or inspection.

10.2 A minimum of one blank (extraction fluid #1) for every 10 extractions that have been conducted in an extraction vessel shall be employed as a check to determine if any memory effects from the extraction equipment are occurring.

10.3 A matrix spike shall be performed for each waste unless the result exceeds the regulatory level and the data is being used solely to demonstrate that the waste property exceeds the regulatory level. If more than one sample of the same waste is being tested, a matrix spike needs to be performed for every twenty samples and the average percent recovery applied to the waste characterization.

10.3.1 Matrix spikes are to be added after filtration of the TCLP extract and before preservation. Matrix spikes should not be added prior to TCLP extraction of the sample.

10.3.2 Matrix spike levels should be made at the appropriate regulatory threshold limits. However, if the extract contaminant concentration is less than one half the threshold limit, the spike level may be one half the contaminant concentration but not less than the quantitation limit or a fifth of the threshold limit.

10.3.3 The purpose of the matrix spike is to monitor the adequacy of the analytical methods used on the TCLP extract and to determine whether matrix interferences exist in analyte detection. If the matrix spike recoveries are less than 50%, then the analytical methods are not performing adequately or use of the methods is inadequate. Use of internal calibration quantitation methods, modification of the analytical methods, or use of alternate analytical methods may be needed to accurately measure the contaminant concentration in the TCLP extract.

10.3.4 Use of internal quantitation methods is also required when the contaminant concentration is within 20% of the regulatory level. (See section 10.5 concerning the use of internal calibration methods.)

10.3.5 Matrix spike recoveries are calculated by the following formula:

$$\text{Percent recovery} = \frac{A-B}{C} \times 100\%$$

where A = the concentration of the spiked sample,
B = the concentration of the unspiked sample, and
C = the spike level

10.4 All quality control measures described in the appropriate analytical methods shall be followed.

10.5 The use of internal calibration quantitation methods shall be employed for a contaminant if: (1) Recovery of the contaminant from the TCLP extract is not at least 50% and the concentration does not exceed the regulatory level, and (2) The concentration of the contaminant measured in the extract is within 20% of the appropriate regulatory level.

10.5.1 The method of standard additions shall be employed as the internal calibration quantitation method for each metallic contaminant.

10.5.1.1 The method of standard additions requires preparing calibration standards in the sample matrix rather than reagent water or blank solution. It requires taking four identical aliquots of the solution and adding known amounts of standard to three of these aliquots. The fourth aliquot is the unknown. Preferably, the first addition should be prepared so that the resulting concentration is approximately 50% of the expected concentration of the sample. The second and third additions should be prepared so that the concentrations are approximately 100% and 150% of the expected concentration of the sample. All four aliquots are maintained at the same final volume by adding reagent water or a blank solution, and may need dilution adjustment to maintain the signals in the linear range of the instrumental technique. All four aliquots are analyzed.

10.5.1.2 Prepare a plot, or subject data to linear regression, of instrumental signals or external-calibration-derived concentrations as the dependent variable (y-axis) versus concentrations of the additions of standard as the independent variable (x-axis). Solve for the intercept of the abscissa (the independent variable, x-axis) which is the concentration in the unknown.

10.5.1.3 Alternately, subtract the instrumental signal or external-calibration-derived concentration of the unknown (unspiked) sample from the instrumental signals or external-calibration-derived concentrations of the standard additions. Plot or subject data to linear regression of the corrected instrumental signals or external-calibration-derived concentrations as the dependent variable versus the independent variable. Derive concentrations for unknowns using the internal calibration curve as if it were an external calibration curve.

10.6 Samples must undergo TCLP extraction within the following time periods:

SAMPLE MAXIMUM HOLDING TIMES

[Days]

	From: Field collection To: TCLP extraction	From: TCLP extraction To: Preparative extraction	From: Preparative extraction To: Determinative analysis	Total elapsed time
Volatiles	14	NA	14	28
Semi-volatiles	7	7	40	54
Mercury	28	NA	28	56
Metals, except mercury	180	NA	180	360

NA = Not applicable.

If sample holding times are exceeded, the values obtained will be considered minimal concentrations. Exceeding the holding time is not acceptable in establishing that a waste does not exceed the regulatory level. Exceeding the holding time will not invalidate characterization if the waste exceeds the regulatory level.

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

7. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6924, and 6925.

8. Section 264.301 is amended by revising paragraph (e)(1) to read as follows:

§ 264.301 Design and operating requirements.

* * * * *

(e) * * *

(1) The monofill contains only hazardous wastes from foundry furnace emission controls or metal casting molding sand, and such wastes do not contain constituents which would render the wastes hazardous for reasons other than the Toxicity Characteristic in § 261.24 of this chapter, with EPA Hazardous Waste Numbers D004 through D017; and

* * * * *

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT STORAGE, AND DISPOSAL FACILITIES

9. The authority citation of part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, 6925, and 6935.

10. Section 265.221 is amended by revising paragraph (d)(1) to read as follows:

§ 265.221 Design requirements.

* * * * *

(d) * * *

(1) The monofill contains only hazardous wastes from foundry furnace emission controls or metal casting molding sand, and such wastes do not contain constituents which would render the wastes hazardous for reasons other than the Toxicity Characteristic in § 261.24 of this chapter, with EPA Hazardous Waste Numbers D004 through D017; and

* * * * *

11. Section 265.273 is amended by revising paragraph (a) to read as follows:

§ 265.273 Waste analysis.

* * * * *

(a) Determine the concentrations in the waste of any substances which equal or exceed the maximum concentrations contained in Table 1 of § 261.24 of this chapter that cause a waste to exhibit the Toxicity Characteristic;

* * * * *

PART 268—LAND DISPOSAL RESTRICTIONS

12. The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

13. Appendix I of part 266 is revised to read as follows:

Appendix I—Toxicity Characteristic Leaching Procedure (TCLP)

Note: The TCLP is published in Appendix II of part 261.

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

14. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), and 6926.

15. Section 271.1, paragraph (j), the heading of Table 1 is republished, and Table 1 is amended by adding the following entry in chronological order by date of promulgation to read as follows:

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	Federal Register reference	Effective date
*	*	*	*
March 29, 1990	Toxicity characteristic	[Insert FR reference on date of publication].	September 25, 1990

PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

16. The authority citation for part 302 continues to read as follows:

Authority: 42 U.S.C. 9602; 33 U.S.C. 1321 and 1361.

17. Section 302.4 is amended by revising under the column Hazardous Substance the entry "Unlisted Hazardous Wastes Characteristic of EP Toxicity" to read "Unlisted Hazardous Wastes Characteristics:" and by revising the entry "Characteristic of EP Toxicity" and its sub entries to read as follows:

§ 302.4 Designation of hazardous substances.

* * * * *

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES

Hazardous substance	CASRN	Regulatory synonyms	Statutory RQ	Statutory Code†	Statutory RCRA waste number	Final RQ Category	Final RQ Pounds (Kg)
*	*	*	*	*	*	*	
Characteristic of Toxicity:							
Arsenic (D004)	N.A.		*1	4	D004	X	1 (0.454)
Barium (D005)	N.A.		*1	4	D005	C	1,000 (454)
Benzene (D018)	N.A.		1000	1, 2, 3, 4	D018	A	10 (4.54)
Cadmium (D006)	N.A.		*1	4	D006	A	10 (4.54)
Carbon tetrachloride (D019)	N.A.		5,000	1, 2, 4	D019	A	10 (4.54)
Chlordane (D020)	N.A.		1	1, 2, 4	D020	X	1 (0.454)
Chlorobenzene (D021)	N.A.		100	1, 2, 4	D021	B	100 (45.4)
Chloroform (D022)	N.A.		5,000	1, 2, 4	D022	A	10 (4.54)
Chromium (D007)	N.A.		*1	4	D007	A	10 (4.54)
o-Cresol (D023)	N.A.		1,000	1, 4	D023	C	1,000 (454)
m-Cresol (D024)	N.A.		1,000	1, 4	D024	C	1,000 (454)

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code†	RCRA waste number	Category	Pounds (Kg)
p-Cresol (D025)	N.A.		1,000	1, 4	D025	C	1,000 (454)
Cresol (D026)	N.A.		1,000	1, 4	D026	C	1,000 (454)
2,4-D (D016)	N.A.		100	1, 4	D016	B	100 (45.4)
1,4-Dichlorobenzene (D027)	N.A.		100	1, 2, 4	D027	B	100 (45.4)
1,2-Dichloroethane (D028)	N.A.		5,000	1, 2, 4	D028	B	100 (45.4)
1,1-Dichloroethylene (D029)	N.A.		5,000	1, 2, 4	D029	B	100 (45.4)
2,4-Dinitrotoluene (D030)	N.A.		1,000	1, 2, 4	D030	A	10 (4.54)
Endrin (D012)	N.A.		1	1, 4	D012	X	1 (0.454)
Heptachlor (and hydroxide) (D031)	N.A.		1	1, 2, 4	D031	X	1 (0.454)
Hexachlorobenzene (D032)	N.A.		*1	2, 4	D032	A	10 (4.54)
Hexachlorobutadiene (D033)	N.A.		*1	2, 4	D033	X	1 (0.454)
Hexachloroethane (D034)	N.A.		*1	2, 4	D034	B	100 (45.4)
Lead (D008)	N.A.		*1	4	D008		(#)
Lindane (D013)	N.A.		1	1, 4	D013	X	1 (0.454)
Mercury (D009)	N.A.		*1	4	D009	X	1 (0.454)
Methoxychlor (D014)	N.A.		1	1, 4	D014	X	1 (0.454)
Methyl ethyl ketone (D035)	N.A.		*1	4	D035	D	5,000 (2270)
Nitrobenzene (D036)	N.A.		1,000	1, 2, 4	D036	C	1,000 (454)
Pentachlorophenol (D037)	N.A.		10	1, 2, 4	D037	A	10 (4.54)
Pyridine (D038)	N.A.		*1	4	D038	C	1,000 (454)
Selenium (D010)	N.A.		*1	4	D010	A	10 (4.54)
Silver (D011)	N.A.		*1	4	D011	X	1 (0.454)
Tetrachloroethylene (D039)	N.A.		*1	2, 4	D039	B	100 (45.4)
Toxaphene (D015)	N.A.		1	1, 4	D015	X	1 (0.454)
Thrichloroethylene (D040)	N.A.		1000	1, 2, 4	D040	B	100 (45.4)
2,4,5-Trichloroethylene (D041)	N.A.		10	1, 4	D041	A	10 (4.54)
2,4,6-Trichlorophenol (D042)	N.A.		10	1, 2, 4	D042	A	10 (4.54)
2,4,5-TP (D017)	N.A.		100	1, 4	D017	B	100 (45.4)
Vinyl chloride (D043)	N.A.		*1	2, 3, 4	D043	X	1 (0.454)
* * *	*	* * *	*	*	*	*	*

†—indicates the statutory source as defined by 1, 2, 3, or 4 below.
*1—indicates that the 1-pound RQ is a CERCLA statutory RQ.
#—indicates that the RQ is subject to change when the assessment of potential carcinogenicity is completed.

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Part III

Federal Retirement Thrift Investment Board

5 CFR Part 1601
Participant Choice of Investment Funds; Interim Rule

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1601

Participant Choice of Investment Funds

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Interim rule with request for comments.

SUMMARY: The Executive Director of the Federal Retirement Thrift Investment Board is publishing in 5 CFR part 1601 interim rules governing participants' choice of investment Funds. These interim rules apply to investment of employee contributions, Agency Automatic (1%) Contributions, and Agency Matching Contributions, in accordance with the provisions of 5 U.S.C. 8438.

DATES: Interim rules effective March 29, 1990. These interim rules apply to all open seasons beginning on or after November 15, 1987. Comments must be received on or before May 29, 1990.

ADDRESSES: Comments may be sent to David L. Hutner, Senior Attorney, Federal Retirement Thrift Investment Board, 805 Fifteenth Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: David L. Hutner, (202) 523–6367.

SUPPLEMENTARY INFORMATION: Subpart A of the rule sets forth definitions of terms used in this part. Subpart B of the rule deals with participants' choice of investment Funds in which to invest new Government or employee contributions. Rules governing participants' transfer of existing account balances among the C Fund, F Fund, and G Fund (interfund transfers) are contained in Subpart C.

Section 1601.1 contains definitions of terms used in Part 1601.

Section 1601.2 sets forth the manner and timing of participants' choice of investment Funds in which to invest their new contributions. Prior to January 1, 1988, all contributions were required to be invested in the G Fund. Since January 1, 1988, FERS employees have been permitted to place some of their employee contributions in the C Fund and/or F Fund. Under § 1601.2, an employee may make an initial allocation or change the allocation of new contributions among the three investment Funds only by submitting a properly completed Election Form to his or her employing agency. The employee may designate amounts to be invested in the three investment Funds only in terms of percentages of contributions. Those percentages must be in increments of 5 percent. Any Election Form that designates funds for investment in the three investment Funds in dollar amounts rather than percentages, or that does not make the designation in increments of 5 percent, or that designates more than the permissible maximum amounts for investment in the C Fund and/or F Fund, cannot be accepted by the employing agency and must be returned to the employee. Any participant who elects to direct any of his or her contributions to the C Fund or the F Fund must sign and date the Acknowledgment of Risk Section of the Election Form. Unless the employing agency accepts a properly completed Election Form in accordance with 5 CFR 1600.6, the allocation of the participant's new contributions among the investment Funds will not be changed.

Section 1601.3 implements the restrictions on investment of contributions contained in 5 U.S.C. 8438(e). Section 1601.3(a) provides that all contributions made by CSRS employees, and all earnings on those contributions, must remain in the G Fund at all times. The limitations on FERS employees' contributions are contained in § 1601.3(b)–(g). For 1987, 100 percent of the contributions of FERS employees were "restricted" to investment in the G Fund. The percentage of FERS employee contributions that is restricted decreases 20 percent per year beginning in 1988. Starting with contributions made in 1992, all FERS employee contributions are unrestricted. Subsection (c) reflects the effect of section 2 of Public Law 100–366 (amending 5 U.S.C. 8438(e)(3)(A)), which provides that all the earnings on FERS employee contributions are unrestricted at all times.

Employer contributions (consisting of Agency Automatic (1%) and Agency Matching Contributions) for FERS employees have limitations similar to those imposed upon employee contributions, except that all employer contributions and associated earnings must be invested in the G Fund through the end of 1992. Starting in 1993, the percentage of employer contributions that is restricted declines 20 percent each year until 1997, when all employer contributions made on behalf of FERS employees, and associated earnings, become unrestricted.

The table in § 1601.3(d) sets forth, for 1988 through 1992, the percentage of FERS employee contributions in each year that are unrestricted and permitted to be invested, at the employees' choice, in the C Fund and/or the F Fund. The table also indicates the earliest election period during which employees may choose to contribute amounts up to those percentages to the C Fund and/or the F Fund. The table in § 1601.3(f) sets forth the annual percentages of employer contributions that will be unrestricted, and indicates the earliest election period to which those percentages apply.

Section 1601.4 provides that errors in the investment of a participant's account will be corrected in accordance with the Board's error correction regulations.

Section 1601.5 describes the eligibility of funds to be transferred among the three investment Funds. For CSRS employees (including employees entitled to contribute to the Thrift Savings Plan pursuant to Pub. L. 100–654 or Pub. L. 100–659), all monies in their accounts must remain invested in the G Fund at all times. Accordingly, § 1601.5(b) states that CSRS employees are ineligible to make interfund transfers.

The rules governing the eligibility of FERS employees to make interfund transfers are set forth in § 1601.5(c). Section 1601.5(c)(1) states the percentages of FERS employee contributions made each year during 1987 through 1991 which are eligible to be transferred among the three investment Funds. All earnings on employee contributions are eligible to be transferred among the three investment Funds. As of January 1, 1992, all employee contributions will become unrestricted and, therefore, eligible to be transferred among the three investment Funds.

Section 1601.5(c)(2) states the percentages of employer contributions (and associated earnings) made on behalf of FERS employees each year during 1987 through 1996 that are eligible to be transferred among the three investment Funds. All employer contributions, and earnings on those contributions, made through 1992 are restricted and must remain invested in the G Fund until December 31, 1996. The percentages of employer contributions made during 1993 through 1996, and earnings on those contributions, that are eligible to be transferred among the three investment Funds are set forth in section 1601.5(c)(2)(i). Section 1601.5(c)(2)(ii) provides that as of January 1, 1997, all employer contributions, and earnings on them, will become unrestricted and, therefore, eligible to be transferred among the three investment Funds. Section 1601.5(c)(4) provides that participants who are receiving equal payment withdrawals pursuant to 5 U.S.C. 8433(b)(3) or (c)(3) are ineligible to make interfund transfers, since their full

account balances must remain invested in the G Fund.

Section 1601.6 describes the procedures by which a participant may request an interfund transfer. In sum, the participant must submit a properly completed, signed (including an additional signature in the acknowledgment of risk section if the participant elects to place any of his or her unrestricted account balance in the C Fund or the F Fund), and dated Interfund Transfer Request Form within the time limits established in § 1601.7. Section 1601.6(d) describes the circumstances under which an Interfund Transfer Request Form will be rejected by the Plan's recordkeeper.

Section 1601.7 establishes the timing for submission of requests for interfund transfers, and establishes the dates on which interfund transfers will be made effective.

Section 1601.7(a) provides that, to be effective, an Interfund Transfer Request Form must be received by the Plan's recordkeeper after the beginning of an open season, but on or before the 15th day of the month following the last month of the open season. Any Interfund Transfer Request Form received after the 15th day of the month following the last month of an open season, but before the beginning of the next open season, will be returned to the participant. The Executive Director may set other deadlines for submission of Interfund Transfer Request Forms, as he deems appropriate.

Section 1601.7(b) states the date on which an acceptable Interfund Transfer Request received on or before the 15th day of the month following an open season will be made effective for purposes of applying the Board's earnings allocation regulations. Monies will be transferred through the interfund transfer process effective as of the end of the month following the open season and will be credited with full earnings in the investment Funds to which those monies were transferred beginning in the month following the effective date of the transfer.

Section 1601.7(c) provides limited exceptions to the deadline for submission of Interfund Transfer Request Forms. One exception is where the Executive Director determines that the failure to meet the deadline was caused by exceptional circumstances beyond the participant's control. Alternatively, an exception can be made where the Executive Director determines that the failure to timely submit an Interfund Transfer Request Form was caused by Board or recordkeeper error. In either case, an exception may only be granted if the Executive Director determines that the Interfund Transfer Request Form was submitted in a timely fashion under the circumstances.

Section 1601.7(d) provides that where the Executive Director provides other periods for submission of Interfund Transfer Requests, such interfund transfers shall be effective on dates provided by the Executive Director.

Section 1601.7(e) lists those transactions that will be taken into account in computing the unrestricted account balance that will be allocated among the three investment Funds according to the percentages chosen by the participant on his or her Interfund Transfer Request Form.

Section 1601.7(f) states that only one interfund transfer may be made effective in connection with each open season. If more than one acceptable Interfund Transfer Request Form is received from the same participant within the deadline for submission, only the form with the latest signature date will be processed.

Section 1601.7(g) states the procedure for cancelling a previously submitted Interfund Transfer Request Form. The cancellation must occur before the relevant deadline for submission of Interfund Transfer Request Forms. Once that deadline passes, an Interfund Transfer Request Form that has been accepted for processing becomes irrevocable. Thus, to cancel an Interfund Transfer Request received in connection with a regular open season, the cancellation must be received by the recordkeeper on or before the 15th of the month following the open season. If the Executive Director has established another period for submission of Interfund Transfer Requests pursuant to paragraph 1601.7(a)(2), then the cancellation must be received on or before the last day of that period.

Section 1601.8 states that errors in processing interfund transfers will be corrected in accordance with the Board's error correction regulations.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities. They will affect only internal government procedures relating to selection of investment funds by participants in the Thrift Savings Plan.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

Waiver of Notice of Proposed Rulemaking and 30-day Delay of Effective Date

Pursuant to 5 U.S.C. 553 (b)(B) and (d)(3), I find that good cause exists for waiving the general notice of proposed rulemaking and for making these regulations effective in less than 30 days. These regulations apply to all open seasons commencing on or after November 15, 1987. Equitable treatment of the participants and beneficiaries of the Thrift Savings Fund requires that participant choices of investment Funds be subject to uniform rules.

List of Subjects in 5 CFR Part 1601

Employee benefit plans, Government employees, Retirement, Pensions.

Federal Retirement Thrift Investment Board.

Francis X. Cavanaugh,

Executive Director.

Title 5 of the Code of Federal Regulations is amended to add part 1601 to chapter VI to read as follows:

PART 1601—PARTICIPANT'S CHOICE OF INVESTMENT FUNDS

Subpart A—Definitions

Subpart B—Investing New Contributions

Subpart C—Interfund Transfers

Authority: 5 U.S.C. 8351, 8438, 8474(b)(5) and (c)(1).

Subpart A—Definitions

§ 1601.1 Definitions.

Account balance means the amount of money in a participant's individual Thrift Savings Plan account as of the effective date of an interfund transfer;

Agency Automatic (1%) Contributions means any contributions made under 5 U.S.C. 8432(c)(1) or 5 U.S.C. 8432(c)(3);

Agency Matching Contributions means any contributions made under 5 U.S.C. 8432(c)(2);

C Fund means the Common Stock Index Investment Fund established under 5 U.S.C. 8438(b)(1)(C);

CSRS means the Civil Service Retirement System established by subchapter III of chapter 83 of title 5, U.S.C., and any equivalent Government retirement plan;

CSRS employee or CSRS participant means any employee or participant covered by CSRS or an equivalent government retirement plan, or who is statutorily required to maintain his or her full account balance in the G Fund (including employees authorized to contribute to the Thrift Savings Plan under 5 U.S.C. 8351, under section 401 of the Federal Employees Health Benefits Amendments Act of 1988 (Pub. L. 100–654), or under section 7 of the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988 (Pub. L. 100–659);

Election period means the last calendar month of an open season and is the earliest period in which a choice to make or change a contribution during that open season can become effective;

Employee contributions means any contributions made under 5 U.S.C. 8432(a), under 5 U.S.C. 8351, under section 401 of the Federal Employees Health Benefits Amendments Act of 1988 (Pub. L. 100–654), or under section 7 of the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988 (Pub. L. 100–659);

Employer contributions means Agency Automatic (1%) Contributions and Agency Matching Contributions;

FERS means the Federal Employees' Retirement System established by chapter 84 of title 5, U.S.C., and any equivalent Government retirement plan;

FERS employee or FERS Participant means any employee or participant covered by FERS or an equivalent Government retirement plan;

F Fund means the Fixed Income Investment Fund established under 5 U.S.C. 8438(b)(1)(B);

G Fund means the Government Securities Investment Fund established under 5 U.S.C. 8438(b)(1)(A);

Interfund Transfer means the movement of the unrestricted portion of a participant's existing account balance among the three investment Funds;

Investment Fund means the G Fund, the F Fund, or the C Fund;

Open season means the period during which participants may choose to begin making contributions to the Thrift Savings Plan, to change or discontinue (without losing the right to recommence contributions the next open season) the amount currently being contributed to the Thrift Savings Plan, or to allocate prospective contributions to the Thrift Savings Plan among the investment Funds;

Participant means any person with an individual account in the Thrift Savings Fund;

Restricted, as applied to contributions or earnings, means any contributions or earnings that must be deposited and that must remain in the G Fund under the rules set forth in this part;

Thrift Savings Fund or *Fund* means the Fund described in 5 U.S.C. 8437;

Thrift Savings Plan, TSP, or *Plan* means the Federal Retirement Thrift Savings Plan established by the Federal Employees' Retirement System Act of 1986, codified in pertinent part at 5 U.S.C. 8431 *et seq.*

Unrestricted, as applied to contributions or earnings, means any contributions or earnings that a participant is entitled to invest in the C Fund, F Fund, or G Fund under the rules set forth in this Part.

Subpart B—Investing New Contributions

§ 1601.2 General rules for investing contributions in the TSP investment funds.

(a)(1) *Initial investments.* Beginning with the first full pay period starting on or after January 1, 1988, and subject to the limits contained in § 1601.3, FERS participants may invest their new TSP contributions in the C Fund, the F Fund, and/or the G Fund.

(2) *Forms.* Each FERS participant may indicate his or her choice of investment Funds by completing an Election Form. If a participant submits an Election Form but fails to indicate on the Election Form how the contributions are to be allocated among the three investment Funds, all contributions shall be invested in the G Fund. The Election Form must be accepted by the employing agency in accordance with regulations then in effect governing employee elections to contribute to the Thrift Savings Plan (5 CFR part 1600) and will be processed as provided in those regulations. A participant who does not wish to change his or her current choice does not need to submit a new Election Form.

(b) *Conditions.* (1) Prospective contributions may be directed to be invested in the G Fund, C Fund and/or F Fund only as a percentage of total contributions per pay period. Percentages may only be in 5 percent increments. If a participant submits an Election Form designating the investment of prospective contributions to any investment Fund in dollar amounts rather than percentages, in percentages other than 5 percent increments, or in violation of the percentage restrictions contained in § 1601.3, the Election Form will have no effect and must be returned to the participant. No changes in the investment of new contributions will be made effective unless a properly completed Election Form is accepted in accordance with this part and the regulations then in effect governing employee elections to contribute to the Thrift Savings Plan (5 CFR part 1600). Once an Election Form becomes effective, it remains effective until superseded by a subsequent Election Form or until the employee ceases to be employed in a position that makes him or her eligible to contribute to the Thrift Savings Plan.

(2) Any participant who elects to invest any portion of his or her contributions in the C Fund and/or F Fund must sign the acknowledgement on the Election Form that the investment is made at the participant's risk, that the participant is not protected by the United States Government or the Board against any loss on the investment, and that neither the United States Government nor the Board guarantees any return on the investment. If the acknowledgement of risk section of the Election Form is not signed and dated, the Election Form will not be accepted.

§ 1601.3 Limitations on investing contributions.

(a) CSRS participants may invest their TSP contributions, and earnings on those contributions, only in the G Fund. Paragraphs (b) through (g) of this section contain restrictions that apply to FERS employees only.

(b) Through 1991, a portion of the employee contributions made by FERS employees is restricted to investment in the G Fund. The remaining percentages of new FERS employee contributions, as described in paragraph (d) of this section, are unrestricted, and may, in accordance with § 1601.2, be directed to any of the investment Funds during any open season. Previously invested unrestricted monies may also be transferred to another investment Fund under the rules set forth in subpart C of this part.

(c) All earnings on FERS employee contributions are unrestricted.

(d) The percentage of each year's new employee contributions that are unrestricted for FERS employees increases by specified amounts from 1988 through 1992 as required by law (5 U.S.C. 8438(e)(1)). The following table

shows the maximum percentages of each year's new employee contributions that may be directed to the C Fund and/or the F Fund, and gives the date of the earliest election period in which a participant may invest up to that percentage of his or her new contributions in the C Fund and/or the F Fund:

Percentage of current employer contributions that are unrestricted	The earliest election period is the first election period beginning on or after—
20	Jan. 1, 1988.
40	Jan. 1, 1989.
60	Jan. 1, 1990.
80	Jan. 1, 1991.
100	Jan. 1, 1992.

(e) Through 1992, all employer contributions made on behalf of FERS employees are restricted and must be invested in the G Fund. During 1993 and through 1996, a portion of each year's employer contributions will be restricted and will be required to be invested in the G Fund. The remaining amounts of employer contributions, as described in paragraph (f) of this section, are "unrestricted," and may, in accordance with § 1601.2, be directed to any of the investment Funds during any open season. Previously invested unrestricted funds may also be transferred to another investment Fund under the rules set forth in subpart C of this part.

(f) The percentage of each year's employer contributions that is unrestricted increases by specified amounts from 1993 to 1997 as provided by law (5 U.S.C. 8438(e)(2)). The following table shows the maximum percentages of each year's employer contributions that may be directed to the C Fund and/or the F Fund, and indicates the date of the earliest election period in which an employee may invest up to that percentage of his or her prospective contributions to the C Fund and/or the F Fund:

Percentage of current employer contributions that are unrestricted	The earliest election period is the first election period beginning on or after—
20	Jan. 1, 1993.
40	Jan. 1, 1994.
60	Jan. 1, 1995.
80	Jan. 1, 1996.
100	Jan. 1, 1997.

(g) As of the first election period beginning on or after January 1, 1997, FERS employees may direct all contributions to any of the investment Funds, subject to the procedures set forth in § 1601.2.

§ 1601.4 Erroneous investment of contributions.

Errors made in the investment of a participant's TSP contributions will be corrected under the error correction regulations contained at 5 CFR part 1605.

Subpart C—Interfund Transfers

§ 1601.5 Amounts eligible to be transferred among the three investment Funds.

(a) Subpart C of this part applies only to transferring the unrestricted portion of participants' existing account balances among the C Fund, F Fund, and G Fund. Subpart C of this part does not apply to participants' choice of the investment Funds in which new contributions are to be invested; that choice is covered in subpart B of this part.

(b) *CSRS employees.* All contributions made by CSRS employees, and all earnings on those contributions, are restricted and, therefore, must remain in the G Fund at all times. CSRS employees are not eligible to make interfund transfers.

(c) *FERS employees*—(1) *Employee contributions.*—(i) All restricted employee contributions made on behalf of FERS employees must remain invested in the G Fund through December 31, 1991. Thus, an amount equal to 100 percent of FERS employee contributions made in 1987, 80 percent of FERS employee contributions made in 1988, 60 percent of FERS employee contributions made in 1989, 40 percent of FERS employee contributions made in 1990, and 20 percent of FERS employee contributions made in 1991, must remain invested in the G Fund through December 31, 1991. Unrestricted FERS employee contributions may be transferred among the investment Funds in accordance with this subpart C of this part. In addition, all earnings on FERS employee contributions are unrestricted and eligible to be transferred among the investment Funds, regardless of whether the employee contributions associated with those earnings were unrestricted.

(ii) As of January 1, 1992, all restricted FERS employee contributions will become unrestricted and, therefore, available to be transferred among the investment Funds in accordance with this subpart C of this part. All FERS employee contributions made after December 31, 1991, will also be unrestricted and, therefore, available for transfer among investment Funds in accordance with this subpart C of this part.

(2) *Employer contributions.*

(i) All restricted employer contributions made on behalf of FERS employees (and all earnings on those contributions), must remain invested in the G Fund through December 31, 1996. Thus, an amount equal to 100 percent of employer contributions made during 1987 through 1992 (and associated earnings), 80 percent of employer contributions made in 1993 (and associated earnings), 60 percent of employer contributions made in 1994 (and associated earnings), 40 percent of employer contributions made in 1995 (and associated earnings), and 20 percent of employer contributions made in 1996 (and associated earnings), must remain invested in the G Fund through December 31, 1996. Unrestricted employer contributions and associated earnings may be transferred among the investment Funds in accordance with this subpart C of this part.

(ii) As of January 1, 1997, all restricted employer contributions and all earnings on those contributions, will become unrestricted and, therefore, will be available to be transferred among the investment Funds in accordance with this subpart C of this part. All employer contributions (and associated earnings) made after December 31, 1996 will also be unrestricted and, therefore, available for transfer among the investment Funds in accordance with this subpart C of this part.

(3) *Eligibility.* Except as provided in paragraph (c)(4) of this section, any FERS participant having unrestricted sums in his or her account is eligible to make an interfund transfer under this subpart C of this part.

(4) *Participants receiving equal payments.* The account balance of a FERS participant who has begun withdrawing his or her account balance in one or more equal payments under 5 U.S.C. 8433(b)(3) or (c)(3) will be invested entirely in the G Fund (5 CFR 1650.10(d)). Such participant is therefore ineligible to make interfund transfers.

(d) *Changes in retirement status.* For purposes of paragraphs (b) and (c) of this section, all contributions (and earnings on them) in the account of a participant who contributed to the TSP as a CSRS employee but subsequently changed his or her retirement status to FERS, will be treated as if they were contributions (and associated earnings) made by a FERS employee.

§ 1601.6 Method of requesting an interfund transfer.

(a)(1) For each open season, the Board will make available to each participant eligible to make an interfund transfer, an Interfund Transfer Request Form, preprinted with the participant's name, address, social security number, and date of birth. If a participant requires a new Interfund Transfer Request Form, one can be obtained by contacting the Thrift Savings Plan recordkeeper.

(2) To make an interfund transfer, a FERS employee must submit a properly completed Interfund Transfer Request Form, to the Thrift Savings Plan recordkeeper, within the time limits contained in § 1601.7. Participants who do not wish to make an interfund transfer do not need to submit an Interfund Transfer Request Form.

(b) The Interfund Transfer Request Form will require a participant to designate the percentages of the unrestricted portion of his or her account balance (as of the day the interfund transfer request is effective, as provided in § 1601.7) that are to be invested in the C Fund, F Fund, and/or G Fund, respectively. The percentages selected by the participant must be in 5 percent increments and must total 100 percent. Submission of an Interfund Transfer Request Form will have no effect on the restricted portion of a participant's account, which must remain invested in the G Fund. Nor will submission of the Interfund Transfer Request Form have any effect on subsequent contributions made to the TSP, which will continue to be made in accordance with the employee's election under subpart B of this part.

(c) Any participant who chooses, on an Interfund Transfer Request Form, to invest any portion of his or her account in the C Fund and/or the F Fund must, in addition to signing and dating the Interfund Transfer Request Form, sign the section of the Interfund Transfer Request Form that contains an acknowledgement that the investment is made at the participant's risk, that the participant is not protected by the Government or the Board against any loss on the investment, and that neither the United States Government nor the Board guarantees any return on the investment. If the signed acknowledgement of risk is not submitted, the Interfund Transfer Request Form will not be processed.

(d) An Interfund Transfer Request Form that has been submitted to the Plan's recordkeeper will not be processed if:

(1) It is not signed and dated;

(2) The acknowledgement of risk section of the form has not been signed when required;

(3) It has not been received within the time limits contained in § 1601.7, or is otherwise required to be rejected in accordance with that section;

(4) The participant has designated dollar amounts rather than percentages, has designated percentages in increments other than 5 percent, or if the total of the percentages selected for the three investment Funds does not total 100 percent;

(5) It is not legible;

(6) It has not been properly completed in accordance with the instructions on the Form and any additional information or instructions provided to the participant with the Form;

(7) The participant is not eligible to make an interfund transfer;

(8) It has been used by a participant other than the participant whose name and other identifying information have been preprinted on the form; or

(9) It does not comply with such other requirements as the Executive Director may prescribe.

(e) If an Interfund Transfer Request Form is rejected for any of the reasons stated in paragraph (d) of this section, the Form will have no effect. The participant will be provided with a brief written statement of the reason the Form was rejected.

§ 1601.7 Timing and effective dates of interfund transfers.

(a) To be effective, an Interfund Transfer Request Form must be received by the Plan's recordkeeper after the beginning of an open season and on or before the 15th day of the month following the last month of an open season (as described at 5 CFR 1600.1 and 1600.2), or by the next business day if the 15th day is not a business day, except:

(1) As provided in paragraph (c) of this section, or

(2) Where the Interfund Transfer Request Form has been submitted within any other time period for submission of interfund transfer requests that may be provided by the Executive Director.

(b) An Interfund Transfer Request that meets the requirements of § 1601.6 and is received by the Plan's recordkeeper within the time limits set forth in paragraph (a) of this section will be effective as of the end of the month following the open season.

(c) An Interfund Transfer Request that meets the requirements of § 1601.6, but is not received by the Thrift Savings Plan's recordkeeper within the time limits set forth in paragraph (a) of this section, will be accepted under paragraph (a)(1) of this section only if, in response to a written request from the participant stating the reasons for the request, the Executive Director determines that:

(1) Due to exceptional circumstances beyond the participant's control, or due to actions (or a failure to act) by the Board or its recordkeeper, the participant was unable to submit an Interfund Transfer Request Form by the deadline, and

(2) An Interfund Transfer Request Form was submitted in a timely fashion under the circumstances.

The belated interfund transfer shall be made effective as of a date no later than the end of the month following the month during which the Executive Director's approval occurs.

(d) An Interfund Transfer Request that meets the requirements of § 1601.6, and is accepted within a time period established by the Executive Director pursuant to paragraph (a)(2) of this section, will be effective at such time as the Executive Director may provide.

(e) For purposes of paragraphs (b) and (c) of this section, unrestricted account balances that are transferred effective as of the end of a given month will reflect the effects of all other account activity posted to the account effective during or at the end of that month.

(f) A participant may have only one interfund transfer made effective in connection with each open season. If more than one Interfund Transfer Request Form complying with the requirements of § 1601.6 for the same participant is received by the recordkeeper on or before the 15th day of the month following the last month of the open season, or the next business day if the 15th day is not a business day, the form with the latest date of signature will be made effective and the other forms will be rejected.

(g) A participant may cancel an Interfund Transfer Request by submitting to the recordkeeper a letter requesting cancellation. To be accepted, the cancellation letter must be signed and dated and must contain the participant's name, Social Security number, and date of birth. To be effective, the cancellation letter must be received on or before the deadline for submission of Interfund Transfer Request Forms which applies to the period during which the Interfund Transfer Request was received by the recordkeeper.

(h) Participants shall be provided with written confirmation of interfund transfers made effective pursuant to this part.

§ 1601.8 Error correction.

Errors in processing interfund transfers will be corrected in accordance with the Error Correction Regulations found at 5 CFR part 1605.

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Reader Aids

Federal Register

Vol. 55, No. 61

Thursday, March 29, 1990

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-3447

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3408
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, MARCH

7289-7470.....1
7471-7686.....2
7687-7878.....5
7879-8114.....6
8115-8438.....7
8439-8896.....8
8897-9092.....9
9093-9310.....12
9311-9406.....13
9407-9708.....14
9709-9866.....15
9867-10032.....16
10033-10222.....19
10223-10394.....20
10395-10596.....21
10597-10764.....22
10765-10998.....23
10999-11132.....26
11133-11356.....27
11357-11570.....28
11571-11886.....29

CFR PARTS AFFECTED DURING MARCH

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6102.....7467
6103.....7683
6104.....8439
6105.....8897
6106.....9311
6107.....9405
6108.....9865
6109.....10761
6110.....10763

Executive Orders:
12473 (See 12708).....11353
12513 (Revoked by EO 12707).....9707
12670 (Superseded by EO 12706).....9313
12686 (Amended by EO 12705).....8113
12705.....8113
12706.....9313
12707.....9707
12708.....11353

Administrative Orders:
Presidential Determinations:
No. 90-10 of Feb. 20, 1990.....8899
No. 90-11 of Feb. 20, 1990.....11129
No. 90-12 of Feb. 28, 1990.....10597
Memorandums:
Mar. 7, 1990.....10033
Mar. 14, 1990.....11131

5 CFR

302.....9407
581.....10223
831.....9093
890.....9107, 10395
1601.....11880

7 CFR

52.....9412
246.....9709, 11109
272.....8289
273.....8289
274.....8289
276.....8289
301.....9719
354.....7289
905.....8441
907.....7687, 8901, 9867, 10675
910.....7471, 8903, 9867, 10767
918.....7289
925.....9416
948.....8443
959.....7689
966.....7879
982.....8904
985.....8905
1106.....10999
1421.....7690, 11571
1736.....8907
1772.....7867, 7880
1900.....9870, 11000
1940.....11133
1945.....7471
1951.....9870, 11000
1955.....9870
1980.....7471, 11133

Proposed Rules:
27.....10781
28.....10781
29.....11023
301.....11208-11209
322.....7499
701.....11384
800.....10784
810.....8956
907.....9453
908.....9453
911.....10785
915.....10785
916.....11592
917.....11592
946.....9460
959.....7717
979.....7903, 8146
981.....9457
1005.....11506
1006.....11599
1007.....11599
1011.....11599
1012.....7718, 11599
1013.....11599
1030.....11599
1032.....7904, 11599
1033.....11599
1036.....11599
1040.....11599
1046.....11599
1049.....11599
1050.....11599
1064.....11599
1065.....11599
1068.....8472, 11599
1076.....11599
1079.....11599
1093.....11599
1094.....11599
1096.....11599
1097.....11599
1098.....11599
1099.....11599
1106.....11599
1108.....11599
1120.....11599
1124.....11599
1126.....11599
1131.....11599
1132.....11599

1134.....11599
1135.....11599
1137.....11599
1138.....11599
1139.....11599
1150.....11024
1230.....11025
1475.....7905

8 CFR

214.....7881
241.....11150
245.....10395

Proposed Rules:

292.....10620

9 CFR

71.....11154
78.....7882, 11154
92.....7883, 10030
97.....7289, 11157
309.....7472
310.....7472
317.....7289
318.....7294
381.....7289

Proposed Rules:

11.....11385
312.....7499
318.....7339
327.....8956
329.....7499
381.....7339, 7499, 8956

10 CFR

11.....11572
25.....11572
30.....10397
40.....10397
50.....10397
60.....10397
61.....10397
70.....10397
72.....10397
95.....11572
150.....10397
600.....9109
605.....10035

Proposed Rules:

50.....9137
110.....10786
430.....7719
708.....9326

12 CFR

5.....7692
220.....11158
229.....11357
264b.....11360
312.....10406
357.....11160
510.....7694
545.....11293
563.....7299, 11293
567.....7475
600.....7884
611.....10042
612.....7884
614.....7884
615.....7884
618.....7884
960.....7479
1505.....11719
1506.....11720
1606.....11720

Proposed Rules:

208.....8147
225.....8147
226.....10465
563.....11311
568.....10247
611.....9138
704.....11608
741.....11608

13 CFR

Ch. V.....11360
108.....9110
115.....10224

Proposed Rules:

108.....9139

14 CFR

27.....7992
29.....7992
39.....7300, 7696, 7703, 8115–8125, 8370–8374, 8445, 8446, 8909, 8910, 9112, 9315, 10042–10048, 10226–10228, 10599–10606, 11007, 11161, 11163, 11720
71.....7301, 8448, 8911, 8912, 9082, 10030, 10232, 10233, 10609, 11009, 11328
73.....8127
75.....10234
91.....9418, 10610
97.....7704, 9316, 11166
99.....8390
121.....8054, 8364, 9824, 11720
129.....8364
133.....7992
135.....8054, 8364
382.....8008
1207.....9250

Proposed Rules:

Ch. I.....10071, 10620
13.....7980, 7989, 9270
21.....7724
25.....7724, 10467
29.....8474
39.....7341, 7502, 7732, 8148, 8149, 8377–8384, 8474, 8961, 8962, 9140, 10071–10074, 10621–10628, 11026–11028, 11220, 11720
47.....9270
61.....9270
71.....7342, 7868, 8151, 10866, 11110
73.....7867, 8151, 10030, 11110
91.....7414, 9270
93.....9090
121.....7414
125.....7414
135.....7414
183.....9270
382.....8076, 8078

15 CFR

775.....10050
776.....10051–10142, 10611
777.....10051
799.....7867, 10142, 11361

Proposed Rules:

400.....9824

16 CFR

305.....7302
460.....10053

Proposed Rules:

307.....9142

17 CFR

1.....7884, 8127
30.....7705, 10611
200.....10234, 11167
250.....11362
270.....7706

Proposed Rules:

240.....11387
250.....11390
401.....7733, 11291

18 CFR

16.....7490, 10768

Proposed Rules:

4.....9894
16.....9894
375.....9894
380.....9894
803.....10629

19 CFR

134.....7303
171.....10055
353.....9046, 11109, 11719
355.....9046, 11109, 11719

Proposed Rules:

111.....11611
113.....11611
142.....11611
143.....11611
159.....11611
177.....10249

20 CFR

404.....7306, 7313, 8449, 11009
416.....7311, 7411, 8449, 10415, 11009
422.....7313, 10030

Proposed Rules:

416.....9332, 9824

21 CFR

5.....9078, 9418
7.....9078
10.....9078
12.....9078
13.....9078
14.....7315, 9078
15.....9078
16.....9078
20.....9078
25.....9078
168.....8458
173.....8912
175.....10235
176.....10236
177.....8139
178.....8913
179.....9078
182.....9826
184.....10030, 10932
200.....11575
201.....11575
207.....11575
211.....11575
225.....11575
226.....11575
250.....11575
299.....11575
310.....11575
312.....11575
314.....11575
320.....11575
329.....11575
330.....11575
331.....11575
333.....9721
338.....9078
361.....11575
369.....11575
429.....11575
430.....11110
431.....11575
433.....11575
440.....11575
441.....11575
442.....11575
444.....11575
446.....11575
448.....9721, 11575
449.....11575
452.....11575
453.....11109
455.....9317, 11110, 11575
510.....8459, 8461
520.....8459, 8461
522.....8461
524.....8461
540.....8459, 8461
555.....8461
558.....8459, 8461, 11012
600.....11012
601.....11012
606.....11012
607.....11012
610.....10420, 11012
620.....11012
630.....11012
640.....10420, 11012
650.....11012
660.....11012
680.....11012
801.....7491
803.....11168
807.....11168
812.....11168
813.....11168
814.....11168
820.....11168
860.....11168
1308.....8914, 9113, 9117

Proposed Rules:

101.....11719
173.....8476
175.....8476
176.....8476
177.....8476
178.....8476
179.....8476
180.....8476
181.....8476
182.....9834
347.....11291
348.....11291
500.....10467, 11719
582.....10467
589.....11719
600.....11611

22 CFR

60.....9722
61.....9722
62.....9722
63.....9722
65.....9722
171.....9317

23 CFR

Proposed Rules:
172.....7739
655.....10988
658.....10468

24 CFR

44.....8462
201.....8464
203.....8464
234.....8464
235.....9723
251.....11342
252.....11342
255.....11342
791.....9252
882.....9252
885.....9117

Proposed Rules:
90.....9332
251.....11332
252.....11332
255.....11332
570.....11556

25 CFR

61.....7492

26 CFR

1.....7316, 7711, 7891, 8946, 9420–9426, 11110
301.....9438, 10236, 11367
602.....7891, 9438, 10236, 11110

Proposed Rules:
1.....7343, 9461–9464, 9920

28 CFR

0.....11585
301.....9296
345.....11326
513.....9296

29 CFR

517.....7450, 7967
1612.....8140
1910.....7967
2676.....9724

Proposed Rules:
1910.....8152, 10250

30 CFR

202.....7317
203.....7317
206.....7317
250.....10614
740.....9400
936.....11169

Proposed Rules:
75.....9732, 11394
206.....8964, 10787
218.....10630
250.....8485
917.....11618, 11619
925.....10632
931.....7919, 7920
935.....9143
938.....10469

31 CFR

215.....7494
545.....10618

32 CFR

64.....9319
375.....11368
516.....10350
518.....10870

Proposed Rules:
168a.....10469
199.....9921
838.....9733

33 CFR

100.....7711, 9120, 9725, 11180, 11585, 11586
110.....11368
117.....10768, 11181, 11587
334.....10237

Proposed Rules:
100.....9465, 11619
110.....10787
115.....7744
117.....8154, 9145, 9466
334.....10253

34 CFR

245.....7711
673.....10237

36 CFR

217.....7892
228.....10423
251.....7892
261.....10423

Proposed Rules:
7.....8487

38 CFR

3.....8140, 8141, 10866
17.....11369

39 CFR

111.....10060
775.....10452
776.....10452
3001.....8142, 10455

40 CFR

35.....10452
52.....7712, 7713, 9121–9125, 9442, 9726, 9876, 9878, 10061, 10062, 11183, 11370
60.....11338
61.....8292, 10455
141.....8948
180.....8142, 9467, 10218, 10456–10459, 11372
185.....10218
186.....10218
228.....11185
260.....8948
261.....8948, 11188, 11798
264.....11798
265.....11798
268.....11798
271.....7318, 7320, 7896, 9127, 9128, 9880, 11015, 11192, 11798
272.....9880
300.....8666, 9688
302.....11798
799.....7322

Proposed Rules:
52.....7503, 8489, 9146, 9923, 10076, 10470, 11029
180.....9467, 10471, 11395, 11396
228.....10633
271.....10076
300.....7507
372.....10254, 10473
799.....11398

41 CFR

Ch. 101.....11018
101–17.....8465
Ch. 301.....10866
301–2.....10769
301–3.....10769
301–10.....10769
301–15.....10769
301–16.....7327
302–1.....10769
302–11.....10866

42 CFR

57.....10063
74.....9538
405.....9538, 11019, 11372
416.....9538
424.....11372
440.....9538
482.....9538
483.....9538
488.....9538
493.....9538

Proposed Rules:
60.....11620
72.....7678, 11624
400.....9740
405.....10951
410.....9740
411.....8491
413.....9740
414.....9740
417.....9740
424.....9740
431.....10938–10951
433.....10938
440.....10077
447.....10077
466.....9740
473.....9740
483.....10256, 10938–10951
485.....9740
489.....9740
494.....9740

43 CFR

Public Land Orders:
6765.....8289
6770.....7898
6771.....11373

44 CFR

64.....9882
65.....8950
207.....7328, 10030

Proposed Rules:
67.....9923

45 CFR

305.....8465
704.....9884
707.....10142
1180.....10460
1351.....7967

46 CFR

550.....10238
580.....10238
581.....10238

Proposed Rules:
10.....8155
515.....10259
525.....10259
530.....10259
560.....10259
572.....10259

47 CFR

0.....8951, 9444
1.....9727, 10461
2.....11195
13.....7898
15.....7494
21.....10461
22.....7899, 10461
73.....7330, 7332, 7495, 7498, 7714, 8468, 8952, 8953, 9322, 9323, 9445, 9446, 9886, 10243, 10778, 10779, 11195, 11373–11375
74.....11587
80.....7898
87.....7332
94.....9727, 10461
97.....9323
300.....9324

Proposed Rules:
2.....8964, 11407, 11625
21.....7344
22.....10475, 11625
25.....11625
43.....7344
65.....10788
73.....7345, 7509, 7745, 7746, 9148–9150, 9340, 9468, 9929–9931, 10259, 10260, 10789–10791, 11222, 11223, 11411, 11412
74.....7344
76.....7509
78.....7344
80.....11407
90.....8966
94.....7344
97.....9341

48 CFR

35.....7634
415.....7333
504.....8953
528.....7967
545.....8953
552.....8953, 9886
553.....8953
570.....11587
705.....8469
706.....8469
719.....8469
726.....8469
752.....8469
1846.....9446
1852.....9446

Proposed Rules:
44.....7870
52.....7870
220.....10637
225.....10637

49 CFR

591.....11375
1022.....11196
1043.....11196
1044.....11196
1047.....11196
1051.....11196
1058.....11196
1061.....11196
1063.....11196

1067.....11196
1070.....11196
1080.....11196
1081.....11196
1083.....11196
1084.....11196
1085.....11196
1091.....11196
1104.....11196
1136.....11196
1143.....11196
1161.....11196
1167.....11196
1169.....11196
1170.....11196
1331.....11196

Proposed Rules:

27.....8081, 11119
28.....9342
225.....9469
386.....11224
571.....7346, 7510, 8497

50 CFR

14.....9730
17.....9129, 9447
23.....7714
33.....7334
216.....11588
285.....10244, 10618
301.....11590
611.....8142, 9887, 11382
663.....11021
841.....8143
655.....9324
656.....7900, 9451
672.....7902, 9887
675.....7337, 7716, 8142, 8145, 8954, 9887, 10246, 10779

Proposed Rules:

17.....7746, 7920, 9150, 9472, 9741, 10083, 11230, 11413, 11625, 11626
20.....9618
227.....10260
228.....10475
251.....8157
641.....8158
642.....11414
658.....7747

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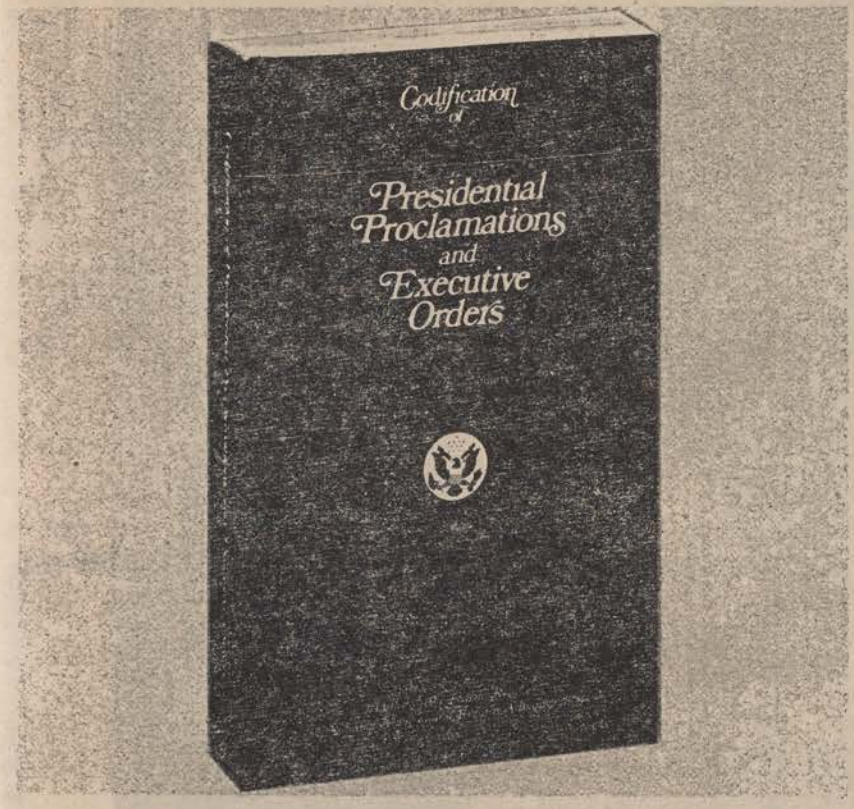

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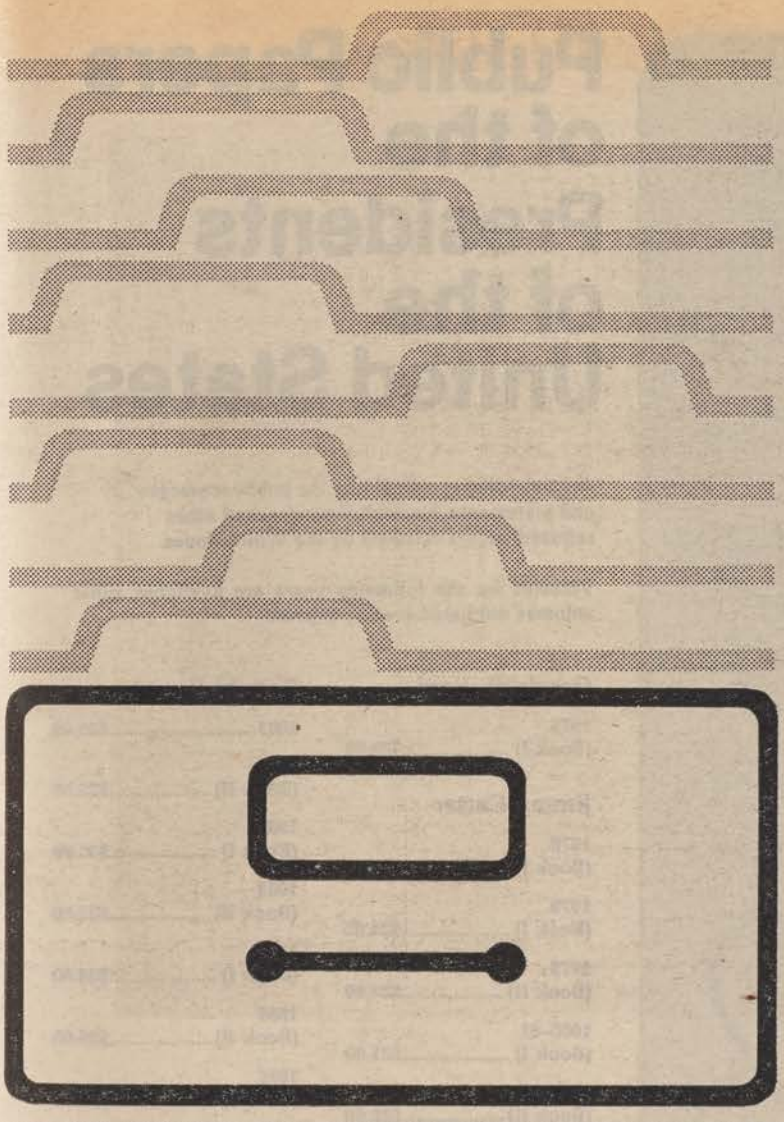

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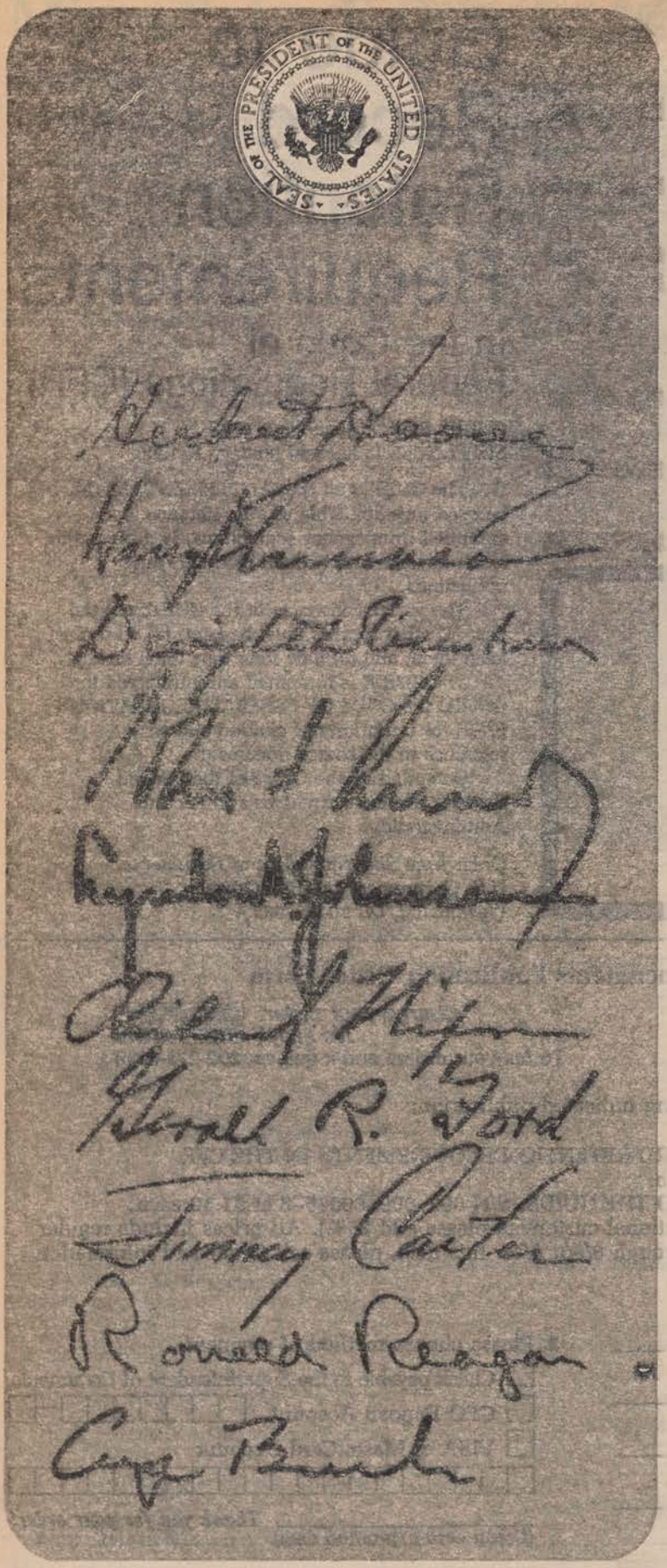

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